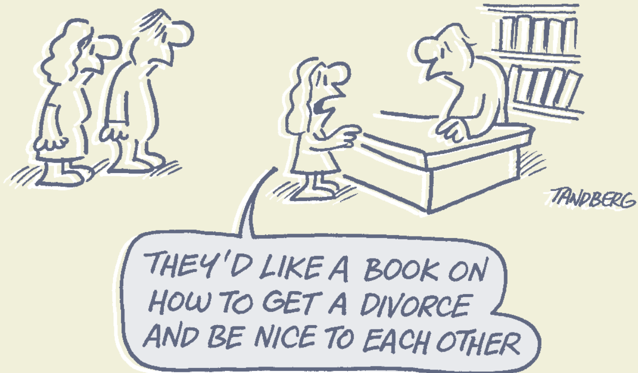
The FAMILY LAW BOOK



FAMILY COURT of AUSTRALIA

In association with the Federal Magistrates Court

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THE FAMILY LAW BOOK

Published by the Family Court of Australia in association with the Federal Magistrates Court

www.familycourt.gov.au

www.fmc.gov.au

FOREWORD

This is the fourth edition of this book since its initial release in 1999. It is only a little over a year since the much revised third edition was published. However, with a complete overhaul of the Family Law Rules in March 2004 it was necessary to go to a new edition.

We have also taken the opportunity to broaden the focus of the book. This is in response to suggestions that have come to us from readers of the book and because of the realities of the family law system as it works in the Courts in Australia today.

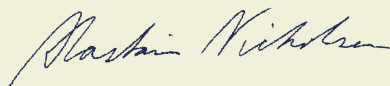
We are now calling it the family law book. Whilst it certainly does not include comprehensive information about all family law services – that would require a much larger publication – it does provide information about both the Family Court of Australia and the Federal Magistrates Court. These are the two federal courts with responsibilities for court-based family law across Australia, except in Western Australia where the services are provided by the Family Court of Western Australia. Importantly, the book also provides suggestions about other services which people who are dealing with family law issues may wish to access. This includes a useful list of contact details.

We hope that the book proves valuable to you. The Courts are ever conscious of the need to provide people with accessible information, particularly in these times where more people are representing themselves in family law proceedings.

Whilst this book cannot replace a competent lawyer, and is not intended to do so, it provides useful and accurate information on a number of practical legal issues, and on the processes of the Courts.

Such information can help to reduce the anxiety experienced by many who are in the process of separating, and possibly increase the chances of disputes being resolved before legal proceedings are contemplated.

Clients who are legally represented, their families and non legal professionals working with families should also find the book useful as it covers a wide range of topics, including important material on the emotional impacts of separation on adults and children and the benefits that mediation can provide.



Chief Justice of the Family Court of Australia
The Hon. Alastair Nicholson AO RFD

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INTRODUCTION

Who this book is for

This book is for anyone who is interested in finding out about the family law services provided by the Family Court of Australia and the Federal Magistrates Court. It also provides references to other services and organisations that assist people experiencing family separation – the Courts being part of a much wider family law system.

It is hoped that it will be of particular value to:

- people who are separating and considering what their next steps might be (but please see Chapter 10 for information particular to de facto relationships – the two Courts do not have power to determine de facto property and spouse maintenance issues);
- people who are already using the services of the Courts;
- the extended families of people who are separating or already using the services of the Courts; and
- service providers that are helping separating families and communities.

WHAT IS IN THE BOOK?

The Family Law Book is primarily about the services and procedures of the Family Court of Australia and the Federal Magistrates Court. Where information applies to both Courts they are referred to as the Courts. The purpose of the Courts is to 'resolve or determine family disputes'. Their aim is to put children and families first in designing and implementing the services they provide for Australians.

The book sets out details of:

- what services are available;
- how and when to access them; and
- how they may assist you to resolve issues around the breakdown of family relationships.

The book uses plain language as much as possible, although legal terms are used, and need to be, as they are part of the language you will come across at Court. Where words or terms are used that are legal or that may not be familiar to many people, a brief explanation is included the first time the word or term is used. As well, 'The guide to legal terms' in Chapter 15 is an easy reference to many of the terms and procedures you are likely to come across in a family law case.

Family law and the various Courts

The Courts from which the parties may seek assistance with family law disputes are:

- The Family Court of Australia.
- The Family Court of Western Australia.
- The Federal Magistrates Court.
- The Magistrates' Courts or Local Courts of each State or Territory.

Both the Family Court of Australia and the Federal Magistrates Court are federal courts established by legislation of the Australian Federal Government.

They must exercise their powers as provided by the *Family Law Act 1975*. Matters can be readily transferred from one court to the other when required.

The Family Court of Australia

The Family Court of Australia can determine all matters dealing with family law. This includes:

- nullity or validity of marriage;
- children;
- property;
- maintenance;
- child support; and
- appeals from decisions of the other courts including by a federal magistrate dealing with family matters, and of decisions made in the Family Court itself.

In child support matters, the parties must first satisfy all requirements of the Child Support Agency.

The procedures of the Family Court are set out in the Family Law Rules 2004. The Court aims to help families resolve their disputes without the need of going to a trial before a judge. Accordingly, the Court has a case management approach that has three main phases:

Stage 1	Prevention
Stage 2	Resolution
Stage 3	Determination

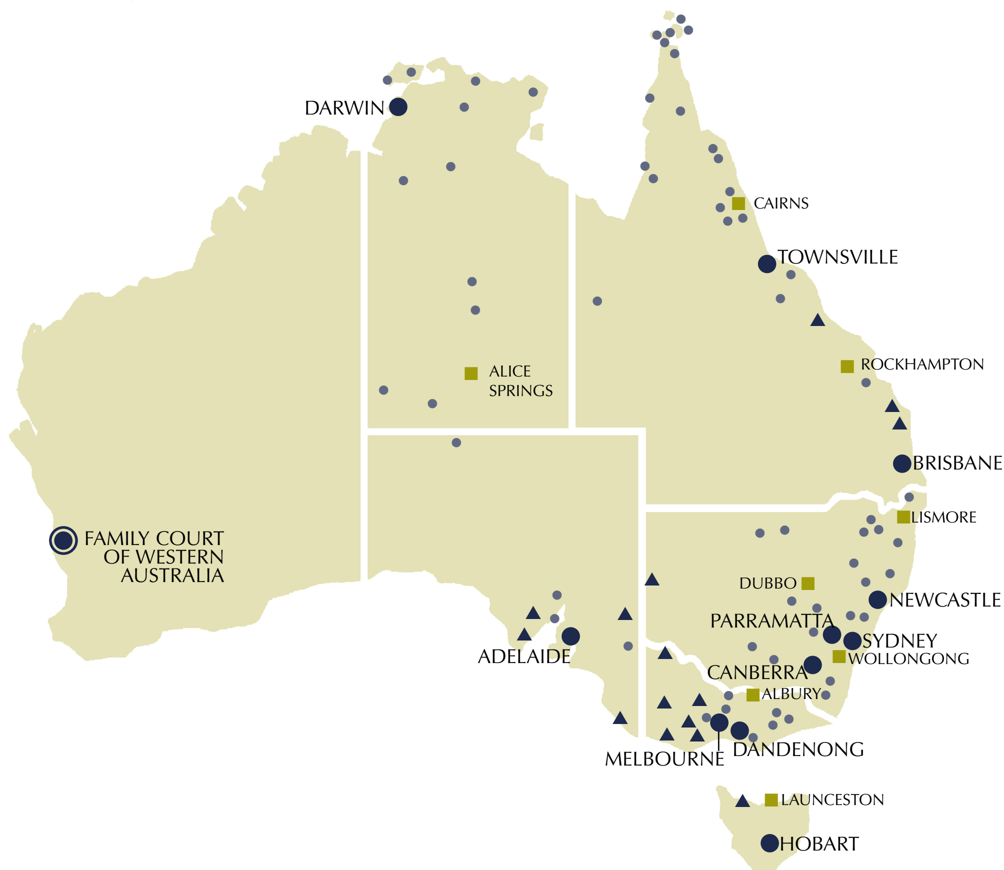
Figure 1 on page vii summarises the key features of these three phases.

If you have access to the internet, you will find that the Family Court's website has a lot of information that may help you. It includes a step-by-step guide (including a visual look at a Court room situation), forms, copies of earlier decisions of the Court and links to legislation. You can access the website at: **www.familycourt.gov.au**

Figure 1 ~ The Family Court's case management approach

1 PREVENTION	2 RESOLUTION	3 DETERMINATION
PRE FILING	POST FILING >>>>>>>>>>>>>>>>>>>>>>>	
Before litigation, eg. community education, relationship/ separation counselling and mediation. Provided by community-based organisations (CBOs). See Chapter 16 on page 111 for contact details. Pre-action procedures – these are actions anyone considering making an application to the Court must complete. See page 11 for details.	**PHASE 1 ASSESS** ■ Information session ■ Case Assessment Conference ■ Procedural Hearings **PHASE 2 RESOLVE** ■ Case management and/ or dispute resolution services are provided and may involve both Court mediators and deputy registrars (Court lawyers). The services provided can vary depending on the particular needs of the parties (families) involved. ■ Cases stay in the resolution phase until all options for resolution have been considered. ■ Most cases are resolved after 2 or 3 steps and without the need for a trial.	**MAIN STAGES** ■ Preparing for trial ■ Pre-trial conference ■ The Trial before a judge Further information about how the Court manages clients' cases is in Chapter 11. The diagram on the inside back cover also summarises how a case might progress through the Court.

LOCATION OF MAJOR SERVICES OF THE COURTS



LEGEND

- Registry
- Rural and Regional Registry
- Judicial/Judicial Registrar/Deputy Registrar/Federal Magistrates court circuits
- Mediation circuits & outreach

The Federal Magistrates Court

The Federal Magistrates Court deals with less complex family law matters, its objective being to provide a simple and accessible alternative for the resolution of family law disputes.

The rules and procedures of the Federal Magistrates Court reflect the simpler and less formal case management practices of the court, which aim to reduce the number of times that the parties have to come to court and to hear most cases without excessive delay.

Further information and procedures can be found in Chapter 11.

The Federal Magistrates Court can hear divorces, children, property, maintenance and child support cases. It cannot hear:

- nullity or validity of marriage applications; and
- property or maintenance cases in which the property is valued at more than over $700,000, unless with consent of both parties.

The Federal Magistrates Court encourages the use of primary dispute resolution (counselling, mediation and conciliation). The Court does not assume that every case ends in a contested hearing and where practical, parties are encouraged to resolve their disputes through out of court negotiations.

The Federal Magistrates Court has an informative and easy to use website. You can access the website at: **www.fmc.gov.au**

COURT REGISTRIES

The Family Court of Australia has 20 registries (offices providing services to the community). SEE PAGE 111 FOR DETAILS.

The Family Court of Australia also provides circuits (visiting services) to a wide range of smaller communities, including many more remote indigenous communities. You can find out more about these visiting services either from the Family Court's website (**www.familycourt.gov.au**) or by contacting your nearest registry.

The Federal Magistrates Court operates from Melbourne, Dandenong, Canberra, Parramatta, Newcastle, Brisbane, Townsville, Darwin, Adelaide, Hobart, Launceston and Sydney (divorce applications only). In most locations, the Federal Magistrates Court shares registries with the Family Court. Similar to the Family Court, the Federal Magistrates Court also provides circuits to a wide range of regional and rural communities.

More information is available from the Federal Magistrates Court's website (**www.fmc.gov.au**) or from your nearest registry.

The State Magistrates Courts have more limited powers in relation to property and will usually transfer matters to the Family Court after making any urgent orders required.

DIFFERENT FORMS AND PROCEDURES

The Family Court and the Federal Magistrates Court manage cases differently.

Each Court has its own set of forms. The specific forms are outlined in the Rules of each Court. You can obtain a copy of the forms from the Court registry or from:

- **www.familycourt.gov.au**
- **www.fmc.gov.au**

FAMILY COURT OF WESTERN AUSTRALIA

While many procedures in the Family Court of Australia and the Family Court of Western Australia are similar, there are significant differences. If you live in Western Australia you should contact the Family Court of Western Australia directly (SEE CHAPTER 16 FOR CONTACT DETAILS).

MAGISTRATES COURT OF A STATE OR TERRITORY

This book concentrates on the procedures in the Family Court of Australia and the Federal Magistrates Court. If you intend using the services of your State or Territory Magistrates Court you need to contact their registry for information. You will find their contact details under 'Attorney General's Department' in your local telephone directory.

DE FACTO RELATIONSHIPS

In the case of de facto relationships, the role of the Courts is limited to issues related to children of the relationship. The Courts currently do not have power to decide disputes about de facto property and maintenance for de facto spouses.

However, the States have referred the necessary powers to the Federal Government to enable it to pass legislation so that the federal Courts can deal with de facto property and de facto spouse maintenance. You can contact the registry of the Courts nearest to you to see if the relevant legislation has been passed by the Federal Parliament. Chapter 10 has further details on de facto relationships.

APPLICATIONS FOR DIVORCE

To formally end your marriage you need to apply for a divorce. Applications for divorce, except in Western Australia, are filed in the Federal Magistrates Court. You may prepare your own application for divorce form or engage the services of a lawyer to do it for you. See more information in Chapter 1.

Single copies of the divorce kit are available free from the Court registries or from the website of the Federal Magistrates Court:

- **www.fmc.gov.au**

An interactive divorce application form

To simplify the process of applying for a divorce, the Federal Magistrates Court has an on-line divorce application. The form can be accessed at:

- **www.divorce.gov.au**

This easy step-by-step application guides you through the process of filling out the divorce form. Once completed, you need to file the application at a court registry (ie. it can not be filed electronically).

For further information about the interactive divorce application visit the website or telephone the Federal Magistrates Court customer service line on **1300 367 110**.

MEDIATION BEFORE STARTING COURT PROCEEDINGS

The Courts aim to help families resolve their disputes without the need of going to a trial before a judge or federal magistrate.

The Courts encourage separated couples to attend mediation before starting court action, and in the case of the Family Court pre-action mediation is a requirement in many situations (SEE CHAPTER 2 FOR MORE DETAILS). Experience shows that mediation can help when you are having difficulty communicating with your former partner, which is something that often happens around the time of the separation, when many adjustments have to be made to your relationship.

Mediation provides professional help that may assist you to come to terms with separation and divorce, including making the best arrangements for your children and the fair distribution of property. It does so by providing an independent third party and a neutral location to discuss and resolve issues that might allow each of you and your children to reorganise your lives.

Legal information and advice

Court staff are often asked for legal advice. They cannot provide it. What they can give you is basic information about the procedures of the Courts. Similarly, this book is not intended to give legal advice. While it explains Court procedures, each case is different and you should seek legal advice to clarify your own position.

FIGURE 2 ON PAGE XIV SUMMARISES WHAT COURT STAFF CAN AND CANNOT PROVIDE.
The clear limitations on the assistance they can provide reflect that, as the decision maker, the Courts must be impartial.

The Rules of the Courts

FAMILY LAW RULES 2004

The Family Law Rules 2004 commenced on 29 March 2004. They apply to all matters before the Family Court of Australia. The Rules set out key obligations as to what forms must be used, when they must be filed and any other requirements of the Court. This book refers to the procedures in the Rules. A link to the Rules is on the Family Court's website:

- **www.familycourt.gov.au**

FEDERAL MAGISTRATE COURT RULES 2001

The Federal Magistrates Court has its own rules of court. These Rules reflect the simpler and less formal case management practices of the Federal Magistrates Court. This book also refers to the procedures in the Federal Magistrate Court Rules. A link to the Rules is on the Federal Magistrates Court website:

- **www.fmc.gov.au**

Currency of this book

The information in this book was correct at 1 June 2004, however procedures can change from time to time. Court staff will assist in providing the latest information as required. The Courts websites set out the latest information you may require.

Information

The Courts produce information to assist people in a range of formats. A DVD/ video information product is expected to be available by late 2004. In the meantime, there are also brochures, kits and books, which further explain the Courts services. Single copies are available free from Court registries. Frequently the information can be obtained also from the Courts websites.

Following is a summary of some of the products that are available.

BROCHURES

- Appeal Procedures
- Appeals – from decisions of Federal Magistrates
- Before you file – pre-action procedures – financial cases
- Before you file – pre-action procedures – parenting orders
- Case Assessment Conference– the first Court event
- Child Support Application
- Conciliation Conferences
- Conference of Experts
- Costs Notice
- Duty of Disclosure
- Enforcement Hearings
- Maintenance Application
- Marriage, Families and Separation
- Mediation Services – Pathway to Agreement
- My Family is Separating – what now? (produced in partnership with the Child Support Agency and Centrelink)
- Parental responsibility and parenting orders
- Subpoena – information for a person requesting issue of a subpoena
- Subpoena – information for the name person (served with a subpoena)
- The Trial – what happens now that a Trial Notice has been issued
- Third Party Debt Notices
- Using telephone and video links in the Court

KITS

- Affidavit – kit for aplicants
- Affidavit – kit for respondents
- Divorce Kit
- Consent Orders Kit
- Financial Statement Kit
- Service Kit

BOOKS

- *Me and My Kids* – parenting from a distance. This is a self-help book for separated parents (especially separated 'contact' parents) on ways to further strengthen or build on relationships between the parent and their children (produced in partnership with the Child Support Agency and the Department of Family and Community Services)
- Children and separation – a guide for parents
- Questions and Answers about separation for children

THE COURTS' WEBSITES:

- **www.familycourt.gov.au**
- **www.fmc.gov.au**

These sites provide a wide range of information about the services of the Courts, their procedures and case management guidelines. They also include copies of the Courts' forms (you can down load and use these) and brochures. There are useful links to all the relevant legislation such as the Family Law Act, the Federal Magistrates Act and the Rules of each Court.

Complaints

FAMILY COURT OF AUSTRALIA

The Family Court takes all complaints seriously.

At the Court you have a right to:

- fair and helpful assistance;
- having your privacy respected and information about you kept confidential unless the law requires otherwise;
- a fair and just hearing in a safe environment;
- timely decisions by the Court; and
- restricted access to information on the file held by the court in relation to your proceedings

If these rights are not met, you have a right to complain.

We will help you by:

- being courteous, helpful and sensitive to your individual needs;
- giving prompt and responsive service;
- providing mediation services appropriate to your needs or referring you to a community agency where appropriate;
- delivering these services in a safe and secure environment; and
- providing accurate and up-to-date information that is clear and understandable (however Court staff cannot provide legal advice to people who are or may be involved in legal proceedings). (SEE FIGURE 2 ON PAGE xiv FOR MORE ABOUT WHAT THE COURT CAN AND CANNOT DO – ALSO AVAILABLE IN THE COURT'S WELCOME BROCHURE.)

If we do not help you in these ways, you have a right to complain.

Figure 2 What Court staff can and cannot do for clients

We can tell you what forms you may need to file for an application.

We can provide you contact details for locally available free legal services (legal aid, community legal service centres), the Law Society and the Family Law Hotline.

We can advise you of mediation/counselling services available within the Court and with agencies in the community.

We can briefly explain and answer questions about how the Court works, its practices and procedures.

We can give you blank copies of Court forms if you wish to proceed with an application or give you details of the Court's website. In some Registries we can provide you with access to the website.

We can provide Court lists and information on how to get a case listed.

We can give you information about how your case is managed and the processes involved in each step along the pathway to a trial.

We can usually answer questions about court requirements such as when certain documents need to be returned to the Court.

We can give you an estimated time of when your matter is likely to proceed to a trial.

We can advise you how to go about modifying an existing order.

We cannot give you legal advice.

We cannot interpret orders made by a Judicial Officer.

We cannot tell you what the decision of the Court will be or give you an opinion about what it might be.

We cannot tell you whether or not you should bring your case to Court. We strongly advise you to seek legal advice as to your rights, especially concerning children and property, before proceeding.

We cannot recommend a certain lawyer to act on your behalf.

We cannot tell you what words to use in your court papers nor whether you have put forward enough information. However, we can check your papers for completeness (for example, we check for signatures, and that attachments are present and signed by an authorised person within your state).

We cannot tell you what to say in court.

We cannot let you communicate with the Judge, other than at the trial.

We cannot change an order once it has been made by the Court. The only way that may be considered is by you making another application to the Court or by appealing against the order.

We cannot enforce an order made by the Court unless you file an application asking for enforcement.

Things you can complain about

- **Administrative issues.** For example, if the standard of service you receive from the Court, including the conduct of staff, does not accord with the Client Service Charter of the Family Court.

  EXAMPLE: Mr X believes that he has had to wait for an unreasonably long time before being served at the Registry counter and when he was served. He asks to speak to the staff supervisor about his experience.

- **The conduct of judges and judicial officers**. If you make a complaint about the conduct of a judge or judicial staff, your complaint will be referred to an Administrative Judge for their examination.

  EXAMPLE: Ms Y believes that there has been an unreasonable delay in delivery of judgment in her matter. She writes to the Court and her letter is referred to an Administrative Judge.

Things you can't complain about

Neither the Chief Justice of the Family Court nor the administration of the Family Court can influence or change judicial decisions in any way.

- **If you are not happy with a judicial decision.** If you believe that a judge misunderstood the facts, weighed them up incorrectly in exercising a discretion, made a mistake of law, or in short made the wrong decision, you have the right to appeal or seek a review of the decision. To do this you must file another action in a Registry. (SEE PAGE 79 OF THIS BOOK FOR MORE INFORMATION ABOUT APPEALS BUT PLEASE BE AWARE THAT TIME LIMITS APPLY TO LODGING APPLICATION FOR REVIEW OR APPEAL.)

  EXAMPLE: Mr Z is not happy with the contact arrangements that the Judge hearing his Child Contact matter has ordered. He believes that there were issues overlooked, or misrepresented, and that the hearing was not a fair one. Mr Z decides he would like an appeal, or review, of the Judge's decision. He consults a solicitor for advice on doing this, or if he is a self-represented litigant, he approaches the Registry for procedural advice on how to make application.

  Please be aware the Registry cannot provide legal advice on any matter.

What we will do with your complaint

If you make a complaint we will:

1. Listen to what you have to say.
2. Investigate your concerns in consultation with other areas.
3. Acknowledge receipt of your complaint within 5 working days.
4. Ensure you receive a formal response to your complaint within 20 working days of receipt of your complaint, unless you are advised that this time frame cannot be met.
5. Apologise if the service you have received does not meet the standard set out in the Service Charter and, if possible, resolve the problem quickly, or give an explanation as to why no further action will be taken.
6. Make sure your feedback is used to improve our services.

If you are not satisfied with the way your complaint was handled

1. If you are not happy with the way your complaint was handled by the Registry, contact the Client Feedback Coordinator, who assists the Chief Executive Officer. They will look at how your complaint has been handled and ensure all of the issues you raised are addressed.

   EXAMPLE 1: Mr Y has complained to a Registry Manager and received a response, but does not believe the Registry Manager understood or addressed his concerns. Mr Y writes to the Client Feedback Coordinator, who examines what has taken place and provides a full response to Mr Z.

2. You may also write to the Client Feedback Coordinator if you wish to make a suggestion or complaint about something the Registry cannot help you with.

   EXAMPLE 2: Ms X believes that access to some Court Registries could be improved for regional clients, so she writes to the Client Feedback Coordinator to offer a suggestion for improvement.

Postal address for the Client Feedback Coordinator:

- The Client Feedback Coordinator
  National Support Office
  The Family Court of Australia
  GPO Box 9991
  Canberra ACT 2601

Email address for the Client Feedback Coordinator:

- **clientfeedback@familycourt.gov.au**

You may also write to the Chief Justice of the Family Court.

Postal address for the Chief Justice:

- The Chief of Staff
  Office of the Chief Justice
  Family Court of Australia
  GPO Box 9991
  Melbourne VIC 3001

Please provide us with a postal address so that we can respond to you formally for security and privacy reasons.

Information you give to the Court in the course of making a complaint is protected by the *Privacy Act 1988*.

Making a complaint about the administrative services of the Court will not in any way affect the outcome of any Court event.

Making a complaint to the Court does not affect your right to contact the Commonwealth Ombudsman (or any other body) if you are not satisfied with our service.

FEDERAL MAGISTRATES COURT

The Federal Magistrates Court has adopted a complaint-handling procedure to ensure complaints are dealt with expeditiously. Anyone may lodge a complaint with the Federal Magistrates Court. If the complaint relates to a specific case, complainants are asked to provide a file reference number. Complaints should be in writing and addressed to:

- Chief Executive Officer
  Federal Magistrates Court
  Level 12 / 305 William Street
  Melbourne VIC 3000

Other family law services

The Courts are one part of a range of government and non-government organisations providing family law services to separating families. If you are not certain whether you should be coming to the Courts or to another part of the family law system, you might wish to obtain a copy of the brochure 'My Family is Separating – what now?'

The brochure aims to be a starting point for information about services available. It aims to point people in the direction of the different services that may be most helpful at different stages in the separation process.

The brochure has been jointly produced by the two courts, the Child Support Agency and Centrelink, with the support of community based organisations. It can be obtained in hard copy from the Courts or these other agencies, including from our websites:

- **www.familycourt.gov.au**
- **www.fmc.gov.au**

Specialised services of the Family Court

The Family Court is committed to providing specialist services to Australian families. Some of these specialist services are summarised here.

ALLEGATIONS OF CHILD ABUSE - MAGELLAN MATTERS

Specific case management processes have been introduced to more effectively manage residence and contact disputes in cases involving allegations of serious physical and/or sexual child abuse.

A panel of senior Court staff, including a judge manages such matters. Cases are finalised within 6 months. Any cases where such allegations are made are automatically considered for the Magellan Program.

INTERIM APPLICATIONS

Unless the matter is urgent, interim applications will be listed for a Case Assessment Conference. If a child matter, it will be before a mediator. If it is a financial matter it will be before a deputy registrar (a Court lawyer). If it involves both child and financial issues, both a mediator and deputy registrar will be involved.

This has enabled many parties to resolve interim issues at an early stage without the need for it to go to a judicial officer.

CHILDREN CASES PROGRAM

Sydney and Parramatta Registries are involved in a new case management program for children matters, involving willing participants.

A judge manages the process after the resolution phase. It is more child focussed. The judge identifies the issues and directs what evidence is required for determination of the issues.

SELF-REPRESENTED LITIGANTS

The Family Court recognises that many clients are self-represented at some stage of the Court process. The Court is currently working with other stakeholders such as, Legal Aid, community legal centres, Attorney General's Department, Federal Magistrates Court, the Federal Court, and the legal profession to develop further initiatives to assist self-represented litigants in the Court with a view to improving "access to justice" for clients without legal representation.

A user friendly step-by-step guide is available on-line via the Family Court's website at:

- **www.familycourt.gov.au/guide/**

CULTURALLY AND LINGUISTICALLY DIVERSE CLIENTS

See Chapter 5 for details about the Family Court's services for culturally and linguistically diverse clients.

ABORIGINAL AND TORRES STRAIT ISLANDER CLIENTS

See Chapter 4 for details about the Family Court's services for Aboriginal and Torres Strait Islander people.

Family violence

Family violence is a serious issue. It affects everyone in a family – children, parents and other members of the extended family.

The Family Law Act requires persons involved in a case to notify the Court of any current or pending Family Violence Orders involving either themselves or their children.

Such violence is defined in the Family Law Act to include conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or be apprehensive about, his or her personal well-being or safety.

The Family Court and the Federal Magistrates Court recognise that some people who use their services may have suffered or continue to suffer family violence. Arrangements can be made for your safety.

The Family Court's work is guided by the following principles:

1 Safety is a priority for all who attend the Court and who work on its premises.

2 Family violence affects everyone. It can occur prior to, during and after separation and may impact on a client's capacity to effectively participate in Court events.

3 Children are affected by family violence. When a child is witness to, or a direct target of, family violence, this will have a significant impact on their well being.

4 The Court is committed to ensuring that it continues to be responsive to the range of specific needs of diverse client groups.

5 Partnerships between the Court and a wide range of organisations, agencies and community groups are essential for the success of the Family Violence Strategy.

Should you have a problem involving family violence please call the client services staff at the Registry where your case is to be heard in advance of your attendance at Court.

SECURITY ON COURT PREMISES

If you are afraid of your former partner or another person involved in your Court case, tell your lawyer or a member of the Court staff, if possible before you come to Court. Arrangements can be made for you to be escorted in and out of the building. Arrangements can also be made for you to have separate sessions with a Court mediator or deputy registrar, or a telephone link-up can be arranged.

In some circumstances face-to-face Court mediation may not be required. Most commonly this is where there is a history of family violence and where there is an obvious power imbalance between the parties. If you consider that either of these applies to you please inform the Court staff.

Some of the Courts registries have 'safe' rooms which clients (and their lawyers if they have one) are able to use. Ask your Registry if such facilities are available and for details about how you can use these rooms.

PARENTING DISPUTES

Family violence is a factor the Courts take into account when considering arrangements or determining disputes involving children. For example the Family Law Act says that children have a right to know and be cared for by both their parents, and also a right to have contact with both parents EXCEPT when it is or would be contrary to their best interests for this to occur.

For example, a parent responsible for family violence may forfeit or seriously reduce their ability to obtain orders for residence or contact with their child.

Privacy

The Courts treat seriously your right to privacy and information security. The Privacy Act 1988 applies when the Court deals with administrative matters.

When the Court collects information for purposes that are not administrative, such as to exercise its jurisdiction, other laws protect it. These include the Family Law Rules which limits access to Court files, and the *Family Law Act 1975* which restricts reporting of proceedings.

TIP

The Family Court's website:
www.familycourt.gov.au

The Federal Magistrates Court's website:
www.fmc.gov.au

are valuable sources of information about the Family Court and Federal Magistrates Court. They include electronic access to the forms of the Courts and provide information on what forms need to be used and when.

The Commonwealth Government's Family Law Hotline: **1800 050 321** is another source you may wish to contact.

It is a toll free information line to help people with issues about family law and to find services in your area.

1 SEPARATION AND DIVORCE

Separation

The end of a relationship or marriage is a difficult time for everyone involved.

Most people who experience separation admit to feeling the worst they have ever felt in their lives. Many are surprised by the intensity of their feelings, or the way they are responding to the situation. Some wonder if they will ever feel differently.

One of the reasons for these feelings during separation is that the person may be experiencing grief. Grief is the feeling usually associated with the loss of some important part of your life.

It is not surprising that emotions are so intense, considering all the things that change during a separation. Separation is not just the physical removal of one person from the home. A relationship involves many areas of your life and separation affects them all.

For some people the grieving process related to the end of a marriage or long-term relationship begins before the decision is made to separate. For others, it occurs during or after the separation.

Figure 3 summarises the different stages you may experience. In real life these stages do not happen in an easy sequence. You may experience a mix of feelings at the one time and you may move back and forward through the stages.

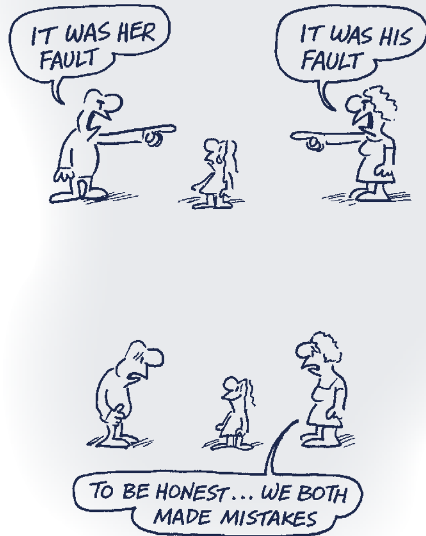


Figure 3 The stages of separation

- denial and disbelief that it is really happening
- confusion
- no acceptance of the loss

- with yourself
- with your former partner
- with a third party

- low-self-esteem
- lost of trust
- depression

- gradual acceptance of loss
- coming to terms
- organising your new life

If you are the one who decided on the separation, you may have been going through these stages for some time. If your partner is the one who has made the decision, you may be only just beginning to experience some of these feelings. Men and women may experience separation differently.

MOVING FORWARD AT A DIFFERENT PACE

You and your former partner can move through the various stages of separation at a different pace. So it is very likely that you will each be feeling different things at different times.

It is possible to be involved in talks with your partner about arrangements for your children and/or financial issues while you are each at different stages of dealing with your separation.

You may consider using community-based mediation and counselling services to assist you with coming to terms with these changes. Chapter 16 provides details of these services, as does the brochure 'My family is separating – what now?' available from the Courts, the Child Support Agency or Centrelink, and also found on the Courts' web sites:

- **www.familycourt.gov.au**
- **www.fmc.gov.au**

WHAT YOU NEED TO CONSIDER

When you separate, you and your partner may need to decide:

- where your children will live and who will take care of them;
- how you and your partner will support yourselves and the children;
- what, how and when you will tell your children, other family members and friends;
- who will pay outstanding bills or debts;
- who will stay in the house;
- how will the rent or mortgage be paid;
- what will happen to the joint account; and
- what will happen to the house, car, furniture and other property.

Even if you cannot make a final decision, try to agree about these things on a temporary basis.

COMING TO TERMS WITH CHANGE

Separation can mean making many adjustments to your life, in areas such as:

- your emotional relationship with each other;
- your sexual relationship;
- your financial and economic relationship – your bank accounts, home, and so on;
- your parental relationship with your children, including who does what for them;

- your role identity – past and future responsibilities of each party; and
- your dreams and hopes for the future.

Mediation

Before filing an application with the Court, you may seek mediation. There are several organisations offering counselling and mediation services. Family counselling services and advisory groups are listed in the Yellow Pages of your phone book. Look under 'Counselling – marriage, family and personal' and 'Community Advisory Services'. USEFUL CONTACTS CAN ALSO BE FOUND IN CHAPTER 16.

Mediation is available, in children matters only, without an application being filed in some registries: Albury, Alice Springs, Cairns, Canberra, Darwin, Dubbo, Hobart, Launceston, Lismore, Newcastle, Rockhampton, Townsville and Wollongong.

Once an application is filed with either the Family Court or the Federal Magistrates Court, you can benefit from the mediation provided by our mediators in all registries. This Court-ordered mediation can be for children's or financial issues or both.

Divorce

To formally end your marriage you need to apply for a divorce. Applications for divorces are filed in the Federal Magistrates Court, except in Western Australia. You cannot remarry until your divorce has been finalised (becomes 'absolute').

You may prepare your own divorce papers or ask a lawyer to do it for you. The form you need is an 'Application for Divorce'. A free divorce kit can be obtained from our registries or from the website of the Federal Magistrates Court. The site has an interactive version for you to complete on a computer. You will have to print it to file the application at the Court (ie. electronic filing is not available at this stage).

The kit has explanatory text to assist in filling in the form. Once you have filled it in, you can file it in the registry of the Court nearest to you, by post or in person. Irrespective of where you obtained the form, it must be filed with the Federal Magistrates Court.

FILING FEE

As of 1 July 2004 there is a filing fee of $288 for the divorce application. It must be paid at the time of filing the application. If you are on a pension or have a health care card, the fee will be waived. You need to complete a form with a copy of the relevant card. If you do not have a pension or health care card but your financial circumstances are such that you cannot afford to pay the filing fee, you may apply for a fee exemption on grounds of financial hardship. You need to file an application setting out your financial circumstances.

Although these fees can change at any time, they are generally adjusted every two years.

WHAT YOU NEED TO SHOW

To apply for a divorce you need to show that:

- you were married;
- you have been separated for not less than 12 months; and
- you or your husband or wife are Australian residents or citizens or regard Australia as your permanent home.

MARRIAGES UNDER TWO YEARS

If you have been married for less than two years the Family Law Act requires you to show that you have considered reconciliation.

When you file your divorce application you must include a special certificate signed by an approved mediation or counselling agency, showing that you have attended counselling or mediation at that agency. This certificate is called the '*Counselling certificate for applicants married less than 2 years*'. Your nearest Registry can print you a blank copy of the form.

If there are special circumstances that make counselling or mediation impossible or inappropriate, tell Court staff.

WHAT THE COURT CONSIDERS

The *Family Law Act 1975* established the principle of no-fault divorce in Australian law. This means that the Court does not consider why the marriage ended. The only grounds for divorce is that the marriage has broken down irretrievably. That is, that there is no reasonable likelihood that you will get back together. You must have been separated for twelve months in order to satisfy the Court that the marriage has broken down irretrievably. The Federal Magistrates Court divorce kit provides further information on how to provide evidence of this 12 months of separation.

If there are children aged under 18, the Court can only grant a divorce if it is satisfied that proper arrangements have been made for them.

WHAT IF YOU CAN'T FIND YOUR SPOUSE?

If you do not know the whereabouts of your spouse, you can still apply to the Court for a divorce. However, you must show the Court that you have tried to contact your spouse and explain your attempts in an affidavit.

You may need to apply for an order to dispense with service where you have done all you can and cannot locate your spouse. If the whereabouts of your spouse is likely to be known to a relative or other person, you may seek an order for substituted service. The Court can order that your spouse be served by the documents being sent to the person you have named in your affidavit or that an advertisement be placed in a newspaper. You should obtain legal advice about how to do this.

HOW TO APPLY FOR A DIVORCE

STEP 1
Completing the application form and having the affidavit sworn or affirmed

Step 1A

Have your details either typed or clearly printed in ink on the application form. Please take time to read the information contained in the checklist on the inside front cover as it will help you to correctly complete the form.

Step 1b

Once you have completed the application you need to **swear or affirm and sign it in the presence of a Justice of the Peace, notary public or lawyer.** This means that you do not put your signature on the application until such time as you are being witnessed (watched) by this person. If you do not have a lawyer assisting you with this application, you may be able to find a list of Justices of the Peace in the Yellow Pages. The Court may be able to advise you where you can find a Justice of the Peace – in some registries volunteers who are Justices of the Peace provide a service for swearing or affirming affidavits. Please ask the Court whether this facility is available.

Step 1c

You make 2 photocopies of your completed and signed application form (so that you have one original and two copies in total). The photocopies must be clear and easy to read. You are now ready to file the application.

STEP 2
Filing your application and receiving a hearing date and place

Step 2a

You file the application in the Federal Magistrates Court. You need to file:

- **The original application form** plus two copies of it. A fee is payable, ask registry staff for details. However, you may not have to pay the fee depending on your circumstances. Ask registry staff for the relevant form that you need to fill in and provide to the Court.
- **A photocopy of your marriage certificate.** If you do not have your marriage certificate to photocopy a certified copy can be obtained from the Registry of Births, Deaths and Marriages in the country, state or territory where you were married.

  If you cannot provide a copy of your marriage certificate, then the Court will need evidence from you in an affidavit proving that you are married. You should obtain legal advice about how to do this.

  If your marriage certificate is not in English, then you must also lodge:

  ~ an English translation of it, and

  ~ an affidavit from the translator which

    – states his or her qualifications to translate,

    – attaches a copy of the marriage certificate,

    – attaches the translation,

STEP 2 continued

- states that the translation is an accurate translation of the marriage certificate, and
- states that the attached copy of a marriage certificate is a true copy of the marriage certificate translated.

The Commonwealth Department of Immigration and Multicultural and Indigenous Affairs can tell you how to get a translation.

Step 2b

The Court puts a file number and the time, date and place for the hearing of your application on the application. The application may be heard at the location where you file it, or you can ask about having the application listed for hearing at a place more convenient to you, if it is visited by the Court on circuit.

You receive back from the Court:

- 2 copies of the application, and
- 2 copies of the Family Court information brochure *Marriage, Families and Separation*. This sets out the legal and possible social effects of applying for a divorce and the mediation and welfare facilities available to assist you.

STEP 3

What to do with the copies of the application after filing

If you and your spouse have made a joint application, you both keep a copy of the completed application and the brochure, *Marriage, Families and Separation*. You should carefully note the date of hearing which will be clearly marked on the application.

If you are applying on your own, you keep one copy of the completed application and one brochure. You must arrange to have the other copy of the brochure and completed application and any other documents filed with the application, except the photocopy of the marriage certificate, served on your spouse. If your spouse is in Australia, the application and brochure must be served **at least 28 days before the hearing date**. If your spouse is overseas, the application must be served **at least 42 days before the hearing date** (you do not need to send the brochure overseas).

If you do not know your spouse's address and after making all reasonable inquiries you cannot find it out, it is possible to apply to the Court to dispense with service of the application. You should obtain legal advice about how to do this.

STEP 4
What happens if your spouse agrees for the divorce to be granted?

Your spouse will not have to do anything unless the Court requires additional information about any child.

If your spouse agrees that the divorce should be granted but wishes to dispute any of the facts in the application, an affidavit may be filed by your spouse. The affidavit must be filed and served on you at least 7 days before the hearing.

STEP 5
What happens if your spouse does not agree that the divorce should be granted?

Your spouse must then file a response to your application (on the Federal Magistrates Court's 'Response – Divorce or other principal relief):

- if it is served in Australia, **within 28 days of service of the application**
- if it is served outside Australia, **within 42 days of service of the application.**

After filing the response at the Court registry, your spouse must serve a copy of the response on you. It is possible for the Court to extend the time for your spouse to file a response.

STEP 6
The Court hearing

If you do not have any children you do not need to attend the hearing if you have requested that the application be heard in your absence, and your spouse has not objected to this.

If you have children and are applying on your own, you must come to the Court for your hearing at the time and date entered on your application form.

You do not have to attend the hearing if:

- you are making a joint application together with your spouse

AND

- you request that the application be heard in your absence by answering 'no' to Question 2 in Part B of the Application for Divorce.

If you have to come to Court and it is difficult for you to attend in person, you may ask the Court to allow you to attend by telephone or video link. To do this you must make a request in writing to the Court where your application for divorce is filed as soon as possible before the hearing. You may be required to pay the costs of the video link.

If you do not attend, the Court may adjourn or dismiss your application.

If you are making a joint application and you decide after filing the application that you wish the Court to hear your application in your absence, it is possible to ask the Court to do this by both of you writing to the Court.

You should arrive at least 15 minutes before the time shown on your application form and be neatly dressed to appear in Court.

STEP 6 continued

Court staff will help you on your arrival. Ask them beforehand how to address the judicial officer hearing the application, for example as 'your Honour' or 'Registrar'. You should stand when the judicial officer enters or leaves the courtroom and remain standing until he or she sits down. You should also stand whenever you are speaking to the judicial officer.

Children under 18 are generally not allowed in the courtroom.

STEP 7

Decree nisi and the divorce becoming final

Step 7a

If your divorce is granted, an order called a decree nisi is made. After one month and one day, this decree automatically becomes absolute (final) unless within this time:

- an appeal or an application to rescind (set aside) the decree is filed and cannot be determined in that period of one month; or
- one of you has died; or
- the Court has declared that it is not satisfied that there are proper arrangements for all children aged under 18 years.

You may apply to the Court to reduce this period to less than 1 month and 1 day, if there are special circumstances. You may apply in writing before the hearing date, but usually you ask at the hearing.

This period is more likely to be shortened if your spouse agrees to it and tells the Court, either in person or in writing.

NOTE

You should not assume that the divorce will be granted at the first hearing. For example, you may be told by the Court at the hearing that you will need to provide more information. In particular, you should not make arrangements to remarry until the divorce has become final.

Step 7b

After the divorce has become final, the Court will automatically send a Certificate of Divorce to you and your spouse or to your lawyer if you have one.

Arrangements for children, maintenance or property

The granting of a divorce does not decide issues of maintenance, child support, property or parenting arrangements for your children. If you want to apply for orders about these issues, you should do so on the general application form.

NOTE

If you need to apply for maintenance for yourself or a division of property you must apply to the Court within 12 months of your divorce becoming final. After that time you will need the Court's permission to apply.

CHANGE OF NAME, ADDRESS

If you change address after the application is filed you must file a Notice of Address for Service so the Court can send any papers to the correct address. This form is available from Court registries. If you change your name after the application has been filed, you must inform the Court in writing.

IF YOU INTEND TO REMARRY

You cannot remarry until the divorce has becomes final. To do so is an offence (bigamy) and the second marriage is not legal.

If you intend to remarry, you must give your Marriage Celebrant a Notice of Intended Marriage at least 1 month before the wedding date, and comply with other requirements of the *Marriage Act 1961*.

As soon as the divorce is granted (decree nisi) the Marriage Celebrant may accept the Notice of Intended Marriage, however, you must show the marriage celebrant before the wedding a copy of your Certificate of Divorce (previously called the Decree Nisi and Absolute) stamped by the Court.

What if you want to oppose an application for divorce?

Once you have been separated for more than 12 months there are few opportunities to oppose an application for divorce. You should a obtain legal advice on the issue.

However, should you choose to oppose the divorce, the form to use is the Federal Magistrates Court's 'Response – Divorce or other principal relief' (Form 13). This form must be filed at the Court registry:

- within 28 days of service upon you of the divorce application, if it is served in Australia;
- within 42 days of service upon you of the divorce application, if it is served outside Australia.

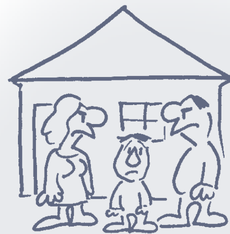
After filing the response at the Court registry, you must serve a copy of the response on your spouse.

If a response has been filed, both parties must attend the hearing.

What if there are errors of fact in the divorce application?

Sometimes a respondent will want the divorce to be granted but, at the same time, wishes to dispute (disagree) with some of the fact in the application. This is possible. They can file a Federal Magistrates Court's 'Response – Divorce or other principal relief' (Form 13).

The form must be filed and served on the applicant (person applying for the divorce) as soon as practicable after filing.



2 BEFORE YOU FILE AN APPLICATION

You do not necessarily have to go to Court to resolve family differences. You and your former partner should consider attending mediation or counselling. There are professional mediators working with community organisations or in private practice who can assist you to reach an agreement. SEE CHAPTER 16 FOR CONTACT DETAILS. You can also obtain information about such services from the Family Law Hotline on 1800 050 321. For further information you might also want to visit the community services directory (click on Community and then Community Services Directory) on the Child Support Agency's website:

- **www.csa.gov.au** or
- **www.law.gov.au**

These services can suggest different ways of thinking and talking about your problems, which may help you make up your mind about your future.

In addition, in the case of most applications other than for divorce or nullity of marriage, the Family Court has requirements for what are known as pre-action procedures. These are actions you are required to take **BEFORE** filing an application with the Court. The remainder of this Chapter sets out information about the pre-action procedure requirements.

Before you file in the Family Court– pre-action procedures you must carry out

The Family Law Rules 2004 require parties applying to the Family Court to participate in what are known as pre-action procedures. These are actions they must take before an application is filed to start a case in the Court, for either parenting orders or financial orders (property settlement or maintenance). (Note: these pre-action procedure requirements do not apply in the Federal Magistrates Court.)

The Family Court has two brochures, entitled:

- *Before you file – pre-action procedure parenting orders*; and
- *Before you file – pre-action procedure financial cases*.

You should obtain the brochure that applies to you.

The aim of the pre-action procedure is to control costs and if possible resolve disputes quickly, ideally without the need to file an application. The pre-action procedure applies to:

- anyone who is considering starting a case;
- anyone who would be named as a respondent if a case was started; and
- their lawyers (if they have one).

The Family Law Rules 2004 require prospective parties to a case to genuinely try to resolve their dispute before starting a case by use of the pre-action procedure. Except in limited circumstances (see following under the heading 'Exemptions') all prospective parties in the Court must:

1. Participate in dispute resolution services, such as mediation, counselling, negotiation, conciliation or arbitration.
2. If dispute resolution is unsuccessful, write to the other parties, setting out their claim and exploring options for settlement.
3. Comply, as far as practicable, with the duty of disclosure (SEE PAGE 15 FOR MORE INFORMATION ABOUT DISCLOSURE).

Anyone who does not comply with these requirements (unless exempt) risks serious consequences, including costs penalties.

EXEMPTIONS FROM THE PRE-ACTION PROCEDURE

Pre-action procedure is not required for applications for divorce or applications for child support. In addition, the Family Court may accept that it is not possible or appropriate for the pre-action procedure to be followed in cases:

- involving urgency;
- (in children's issues) involving allegations of child abuse;
- involving allegations of family violence;
- (in financial cases) involving allegations of fraud;
- where there is a genuinely intractable dispute (for example, where one person refuses to negotiate);

THE FAMILY COURT'S PRE-ACTION PROCEDURE ~ STEP-BY-STEP

STEP 1

Invite the other parties to participate in primary dispute resolution

A person who is considering filing an application to start a case must:

1. Give a copy of these pre-action procedures to the other prospective parties to the case.
2. Invite the other parties to participate in primary dispute resolution. Ask Court staff for a list of such services available in the Registry's area. From this list you may suggest a particular service be used, although the other party may propose they use the services of another provider.

STEP 2

Agree on a service provider and attend the service

Each prospective party must:

- agree on an appropriate primary dispute resolution service; and
- make a genuine effort to resolve the dispute by participating in primary dispute resolution.

Where agreement is reached the parties should consider formalising their agreement by filing an Application for a Consent Order (Form 11)

STEP 3

Written notice of issues and future intentions

If no primary dispute resolution service is available or a person refuses or fails to participate or agreement is NOT reached by primary dispute resolution, a person considering making an application to the Court must give the other person written notice of an intention to start a case in the Court (called a notice of claim), setting out:

- the issues in dispute;
- the orders to be sought if a case is started;
- a genuine offer to resolve the issues;
- a 'nominated time' (at least 14 days after the date of the letter) within which the other person is required to reply.

The pre-action brochure must be attached to the notice of claim.

STEP 4

Replying to the Notice of Claim

The other person must within the 'nominated time', reply to the notice of claim in writing, specifying whether the the offer is accepted.

Where agreement is reached the parties should consider formalising their agreement by filing an Application for a Consent Order (Form 11)

Where the person DOES NOT accept the offer, they must in a letter set out:

- the issues in dispute;
- the orders which will be sought if a case is started;
- a genuine counter offer to resolve the issues;
- a 'nominated time' (at least 14 days after the date of the letter) within which the claimant must reply.

Where the other person does not respond, the obligation to follow pre-action procedure ends. Other dispute resolution actions can be taken, including the filing of an application in the Court.

STEP 4

Taking other action

Where agreement is not reached after reasonable attempts to resolve it by correspondence, other appropriate action may be taken to resolve the dispute, including by filing an application in a court

- where a person would be unduly prejudiced or adversely affected if another person became aware of the intention to start a case (for example, where there is a genuine concern that the other person will attempt to defeat the claim if they have this prior knowledge); and
- where there has been a previous application about the same issue or subject in the last 12 months.

PRE-ACTION PROCEDURE OBJECTIVES

- To encourage early and full disclosure through the exchange of information and documents about the prospective case.
- To help people resolve their differences quickly and fairly, and to avoid legal action where possible. This will limit costs and hopefully avoid the need to start a Court case.
- Where a case becomes necessary because full agreement was not reached, the pre-action procedure should help to clearly identify the real issues in dispute. Again, this should help reduce the time involved and the cost of the case because it will make it easier for the Court to determine the issues and resolve the case quickly and justly.
- To encourage parties to seek only those orders that are reasonably achievable on the evidence.

YOUR OBLIGATIONS AS A PROSPECTIVE PARTY TO A CASE

Families, and particularly the children, are the Court's first consideration when resolving or determining family disputes. At all stages during the pre-action negotiations and, should a case be started, during the case itself, you must keep in mind:

- the need to protect and safeguard the interests of any child;
- the importance of a continuing relationship between a child and a parent, and the benefits the child gains from the parents cooperating with one another, as far as is possible;
- the potential damage to a child involved in a dispute, particularly if the child is encouraged to take sides or take part in any dispute between the parents;
- the importance of identifying issues early and exploring options for settlement;
- the need to avoid protracted, unnecessary, hostile and inflammatory exchanges;
- the impact of correspondence on the reader, particularly on the other party in the case;
- that you should only seek negotiated agreements or orders that are realistic and reasonable given the evidence that is available about the dispute, and that are consistent with the current law;

- the principle of proportionality and the need to control costs – because it is unacceptable for the costs of any case to be disproportionately high compared with the financial value of the subject matter of the dispute; and
- the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.

Parties must not

- Use the pre-action procedure for an improper purpose such as to harass the other party or to cause unnecessary cost or delay.
- In correspondence, raise irrelevant issues or issues that might cause the other party to adopt an entrenched, polarised or hostile position.
- The Court expects parties to take a sensible and responsible approach to pre-action procedures. Parties are not expected to follow the pre-action procedures to their detriment if reasonable attempts to follow them have not achieved a satisfactory result.

COMPLIANCE WITH PRE-ACTION PROCEDURES

The pre-action procedure brochures (published here) set out what the Family Court considers is a standard and appropriate approach to be taken before filing an application in a Court.

If a case is subsequently started, the Family Court may consider whether the requirements have been met, and if not, what the consequences should be (if any). The Court may:

- where there is unreasonable non-compliance, order the non-complying party to pay all or part of the costs of the other party or parties in the case; and/or
- take compliance or non-compliance into account when making orders about case management.

In addition, the Family Court may ensure that the complying party is in no worse a position than he or she would have been if the pre-action procedure had been complied with. Examples of non-compliance with a pre-action procedure include:

- not sending a written notice of proposed application;
- not providing sufficient information or documents to the other party;
- not following a procedure required by the pre-action procedure;
- not responding appropriately within the nominated time to the written notice of proposed application;
- not responding appropriately within a reasonable time to any reasonable request for information, documents or other requirement of this procedure.

Disclosure and exchange of correspondence

Parties to a case have a duty to make timely, full and frank disclosure of all information relevant to the issues in dispute (as set out in Chapter 13 of the Family Law Rules, which can be accessed through the Family Court website or at Court registries). There

may be serious consequences for failing to do this, including punishment for contempt of Court. The Court's brochure *Duty of Disclosure* provides more information concerning this duty.

Parties must not use a document disclosed by another party for any purpose other than to resolve or determine the dispute for which they were disclosed. That is, in seeking the documents through the pre-action procedure, the party receiving them is considered by the Court to have given an undertaking that they will be used for the specific purposes of the case only.

Part 4(2) of Schedule 1 of the Family Law Rules, states, in summary, that in attempting to resolve their dispute, parties should, as soon as practicable on learning of the dispute and, if appropriate, as a part of their exchange of correspondence during the pre-action procedure, exchange:

IN A PARENTING CASE

- Copies of documents in their possession or control relevant to an issue in the dispute. For example, medical reports, school reports, letters, drawings, photographs.

IN A FINANCIAL CASE

- A schedule of assets, income and liabilities;
- a list of documents in the party's possession or control that is relevant to the dispute; and
- a copy of any document required by the other party, identified by reference to the list of documents.

In particular, parties are encouraged to refer to the Family Court's Financial Statement kit (Form 13) which summarises what information to provide and documents to exchange.

Documents that are not subject to the duty of disclosure and that would not be ordered to be disclosed by a Court do not need to be exchanged. These would include documents where there is a claim for privilege from disclosure or documents that have already been disclosed and to which there has been no change that is likely to affect the result of the case.

The documents that the Court would consider as appropriate to be exchanged include:

IN A MAINTENANCE CASE

- The party's taxation return and taxation assessment for the most recent financial year;
- the party's bank records for the previous 12 months;
- if the party receives wage or salary payments, the party's three most recent pay slips;
- if the party owns or controls a business, the business's Business Activity Statements for the previous 12 months; and
- any other document relevant to determining the income, expenses, assets, liabilities and financial resources of the party.

IN A PROPERTY SETTLEMENT CASE

- The party's three most recent taxation returns and assessments;
- documents about any relevant superannuation interest, including:
  - ~ the completed Superannuation Information Form;
  - ~ for a self-managed superannuation fund, the trust deed and the last three financial statements;
  - ~ the value of the superannuation interest, including how the value has been calculated and any documents working out the value;
- for a corporation (business), trust or partnership where the party has a duty of disclosure;
  - ~ financial statements for each (including balance sheets, profit and loss accounts, depreciation schedules and taxation returns) for the three last financial years;
- for the party or a corporation (business), trust or partnership where the party has a duty of disclosure:
  - ~ any Business Activity Statements for the 12 months ending immediately before the first Court date;
- for any corporation, its most recent annual return, listing directors and shareholders; and the corporation's memorandum and articles of association;
- for any trust, the trust deed;
- for any partnership, the partnership agreement, including amendments;
- unless the value is agreed, a market appraisal of any item of property in which a party has an interest.

Where a party is unable to produce a document for inspection, it is reasonable for the party to be required to provide written authority authorising a third party (for example, an accountant) to provide a copy of the document to the other party, where this is practicable.

Parties should agree to a reasonable place and time for the documents to be inspected and copied at the cost of the person requesting the copies.

Where there are disagreements about disclosure, it may be appropriate for a case to be filed with the Court.

Expert witnesses

As part of the pre-action procedure one or other of the parties may require that information be sought from an expert witness. There are strict rules about instructing and obtaining reports from an expert, and these are set out in Part 15.5 of the Family Law Rules. In summary:

- An expert must be instructed in writing and must be fully informed of his or her obligations.
- Where possible parties should seek to retain an expert on an issue only where an expert's evidence is necessary to resolve the dispute.
- Where practicable parties should agree to obtain a report from a single expert instructed by both parties.

- If separate experts' reports are obtained, the Court requires the reports to be exchanged.

Lawyers' obligations during pre-action procedures

Lawyers must as early as practicable:

- advise clients of ways of resolving the dispute without starting legal action;
- advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty;
- subject to it being in the best interests of the client and any child, endeavour to reach a solution by settlement rather than start or continue legal action;
- notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement where, in the lawyer's opinion, the compromise or settlement is a reasonable one;
- in cases of unexpected delay, explain the delay to their client and whether or not the client may assist to resolve the delay;
- advise clients of the estimated costs of legal action;
- advise clients about the factors which may affect the Court in considering costs orders;
- actively discourage clients from making 'ambit claims' or seeking orders which the evidence and established principle, including recent case law indicates, is not reasonably achievable;
- provide clients with documents prepared by the Court about (as applicable):
  - ~ the Legal Aid services and primary dispute resolution services available to them; and
  - ~ the legal and social effects and the possible consequences for children of proposed litigation.

The Court recognises that the pre-action procedure cannot override a lawyer's duty to his or her client. It is accepted that it is sometimes impossible to comply with a procedure because a client may refuse to take advice. However a lawyer has a duty, as an officer of the Court and must not mislead the Court. If a client wishes not to disclose a fact or document which is relevant to the case a lawyer has an obligation to take the appropriate action, ie. cease to act.

The Federal Magistrates Court

The Federal Magistrates Court strongly encourages all parties to attempt to resolve family disputes prior to lodging an application with the Court. The Federal Magistrates Court also encourages parties to comply with the duty of disclosure at all times before starting court proceedings. The Federal Magistrates Court does not however require parties to participate in the pre-action process that is mandated in the Family Court.

3 MEDIATION

Mediation in the Courts provides professional help that may assist you to come to terms with separation and divorce, including making the best arrangements for your children. It does so by providing an independent third party and a neutral location to discuss and resolve issues that might allow each of you and your children to reorganise your lives. It can assist you to discover different ways of thinking and talking about your problems and may help you and your former partner to:

- reduce the level of conflict in your family; and
- adjust to the differences in your parental responsibilities as separated parents.

Experience shows that mediation can help when you are having difficulty communicating with your former partner, which is something that often happens around the time of the separation, when many adjustments have to be made to your relationship. This can occur in areas such as:

- your emotional relationship with each other;
- your financial and economic relationship – your bank accounts, home, and so on;
- your parental relationship with your children, including who does what for them; and
- your dreams and hopes for the future.

Mediation offers a cooperative problem solving process that can help couples reach their own agreement without the need to proceed to court. Sorting matters out between yourselves and coming to an agreement offers a number of significant advantages over litigation:

- You greatly reduce the financial and emotional costs of a legal battle.
- You make your own decisions.
- Your continuing relationship as parents is likely to work better.
- You are able to move forward and make a new life for yourself.
- You may improve communication with your former partner and be better able to resolve disputes in the future.

It is for these reasons that the Courts encourage you to avoid litigation where possible and try to reach agreement through mediation rather than going down the path towards a judge or magistrate determining the matter for you.

Mediation in the Family Court is provided for both Family Court clients and Federal Magistrates Court clients.

When is mediation available in the Courts?

Family Court mediation is available in all registries after an Application for Final Orders (using a Form 1 in the Family Court and an Application in the Federal Magistrates Court) has been filed. This is what is known as Court-ordered mediation. It can be for both child-related (mediation) and financial cases (conciliation) or both. If one or both parties live some distance from the registry the mediation session may be able to take place by telephone.

Family Court mediation may also be available in child-related matters without you having to file an application. This is so at Albury, Alice Springs, Cairns, Canberra, Darwin, Dubbo, Hobart, Launceston, Lismore, Newcastle, Rockhampton, Townsville and Wollongong. Contact these registries direct to make an appointment. (SEE CHAPTER 2 AND CHAPTER 16 FOR INFORMATION ABOUT MEDIATION AND COUNSELLING SERVICES AVAILABLE FROM OTHER PROVIDERS.)

In mediation you will be encouraged to make your own decisions and if necessary you will be offered professional guidance to do this. However, Court mediators and deputy registrars (Court lawyers) are not able to provide legal advice and you will be encouraged to seek legal advice as needed throughout the mediation process. You may ask the Family Court to make orders in terms of the agreement you have reached (child and/or financial issues).

What Court mediation does

Mediation gives parents the opportunity to talk about the needs of their children and make arrangements for their ongoing care. Generally mediation sessions will follow a process of cooperative problem solving and can cover either children's or financial issues or both.

Court mediation can provide separated couples with help about:

- children's issues such as living arrangements, contact arrangements and parenting plans;
- financial support of children; and
- financial matters.

It can also help you to:

- decide which areas are in dispute;
- explore each person's needs and interests;
- explore possible solutions, taking one problem at a time;
- select the most suitable solution; and
- clarify your agreement.

WHO PROVIDES THE COURTS MEDIATION

Professionals provide the Family Court's mediation services. A Court mediator who is a trained social worker or psychologist conducts mediation only dealing with children's issues. If it is a financial matter, a deputy registrar (a Court lawyer) will conduct the session. A joint conference may be held with both a Court mediator and a deputy registrar if your case involves both child-related and financial issues. (These conferences are only held when a couple has been married.)

As well as allowing you to discuss your own feelings about the separation, the Court mediator can help you to understand the needs of your children and help you to negotiate the general care arrangements for your children with your former partner, such as living arrangements or contact arrangements.

GETTING STARTED

There are a number of ways to settle your dispute and you need to decide which is the best method for your situation. Mediation is one of those methods. Through Court mediation you will be encouraged to make your own decisions and if necessary you will be offered professional guidance to do so. It has been found that if you can reach an agreement between yourselves then you are more likely to stick to it.

If the mediation session is to follow a process of cooperative problem solving, it will be more helpful if both partners:

- are willing to reach a mutually satisfactory agreement; and
- have the ability to negotiate on a reasonably equal footing.

The following factors could make it difficult to negotiate:

- reduced abilities due to alcohol or drug abuse, psychiatric illness or mental instability;
- continuing dominance by one partner;
- overwhelming emotions concerning the separation;
- a history of broken agreements;
- the use of mediation as a delaying tactic;
- violent and threatening behaviour; and
- child abuse.

If mediation is not suitable for your situation other options will be discussed.

If you have started legal action about the division of your financial assets the Court may require you to attend a conference (often referred to as a Conciliation Conference) with a deputy registrar. At these conferences the deputy registrar looks at the case from both sides and can help you explore options to try to settle your case without any further legal action. While deputy registrars cannot give legal advice they can talk with you about legal principles that are applied in deciding cases.

Reaching your own agreement

If you do reach a final agreement, you may apply to the Court to have orders made to formalise your agreement or to register it (SEE CHAPTER 9 'CONSENT ORDERS' FOR MORE DETAILS ABOUT HOW TO DO THIS).

IT CAN BE DIFFICULT TO REACH AGREEMENT

It can be tough trying to come to an agreement. Many things can affect this – separation affects everyone in different ways.

It may be helpful to understand that you and your former partner may move through the various stages of separation at a different pace, feeling different things at different times. For example, one of you may be at a point of starting to accept the separation while the other is still feeling angry. Even if you are at different stages (SEE THE FIGURE ON PAGE 1), it is possible to be talking with

your former partner about arrangements for your children or house or money matters.

Importantly, the Court mediator understands you may be at a different stage of moving forward, and that this may affect your ability to negotiate.

In these circumstances it might not be possible to reach your own agreement without professional guidance. For example, it may be inappropriate to conduct a face-to-face mediation session and you may be interviewed separately. The mediation service will be able to give you professional guidance about your issues.

Other dispute resolution services available from the Court include:

- Case Assessment Conferences (Family Court only);
- assistance from Aboriginal and Torres Strait Islander Family Consultants;
- referrals to other agencies when necessary; and
- family reports in some cases when ordered by the Court.

Interpreters

The Court can make interpreters available if prior notice is given that they are needed. Please advise the Court staff, in advance of your mediation appointment, if an interpreter will be needed.

Aboriginal and Torres Strait Islander family consultants

The Family Court's Aboriginal and Torres Strait Islander Family Consultants can assist Aboriginal or Islander people with information about the Court, and with coming to the Court and talking to a Court mediator or deputy registrar. Again, if you wish to use these services, please let the Court staff know in advance of your mediation appointment. See Chapter 4 for more information.

Family violence

Face-to-face mediation may not be required in certain circumstances – where there is a history of family violence and where there is an obvious power imbalance between the parties. SEE PAGE xviii IN THE INTRODUCTION FOR FURTHER DETAILS.

Mediation about children

In resolving issues about children, the Courts primary consideration is the best interests of the children. Accordingly, in attempting to reach a mediated agreement about the arrangements for your children, you should also keep the following in mind:

- the needs of children are the most important consideration;
- unresolved conflict in your family can be harmful for your children;
- children should not be made to choose between parents;

- in most instances, parents make the best decisions about their children;
- mediation can help you as parents to resolve your problems;
- the earlier you seek help through mediation the more likely you are to resolve your problems;
- separation is a highly stressful process which can take up to 2 years or more to resolve; and
- arrangements for your children may need to be adjusted from time to time.

CHILDREN

Children can only be involved in mediation by prior arrangement with the Court mediator and with the agreement of both parents. They are not usually involved in the initial session.

FOR MORE INFORMATION ABOUT CHILDREN AND MEDIATION SEE CHAPTER 6.

TO MAKE AN APPOINTMENT

If you live in an area where Court mediation is available before filing (SEE PAGE 20), please telephone the registry directly for an appointment (CONTACT DETAILS ARE IN CHAPTER 16).

When you make the call you will be asked what is the main issue that you need to decide with your former partner. This is to help select the best session for you and your family.

Usually, both you and your former partner will need to attend the first appointment.

If you live in an area where mediation is only available after you or your former partner have filed for final or interim orders, the Court will advise you when you are required to attend mediation.

PRIVILEGE

Client privilege and confidentiality is respected in Court mediation sessions, as far as is permitted by the law. This enables you to express your thoughts and feelings freely.

Generally what is said during a mediation session may not be used in evidence in family law hearings or proceedings. Some exceptions include:

- In order to protect a child and prevent injury to a person, Court mediators may report to a child welfare authority if something is said during a session.
- There may be circumstances where it is in the best interests of a child for the Court mediator to give certain information to child protection authorities. For instance, any child abuse allegations raised in mediation must by law be reported to the State/ Territory welfare authority.

A mediator is required to keep what is said confidential, and not reveal anything to other people or agencies except to protect a child and prevent injury to a person.

A deputy registrar is not covered by this requirement but what is said in a conference about financial matters is covered by privilege, because it relates to settlement negotiations. This means that what is said can only be brought

up in Court later if the parties agree (or waive the privilege). However if a party reneges on an agreement reached at a conciliation conference, the facts of the agreement can be put to the Court at a later stage on the question of costs.

These concepts (around privilege) are quite complicated in law and it is beyond the scope of this book to provide a full explanation. If you think you might need to claim any privilege if you are in later Court proceedings about things in which you have been involved in conferences, it is recommended that you seek legal advice.

Usually, the only information about your meeting with the Court mediator given during a Court hearing is provided on a form, which sets out who attended, whether an agreement was reached, whether there should be further mediation. In some circumstances, a mediator may also make a recommendation about the future management of your case.

ADVANTAGES OF MEDIATION

- You greatly reduce the financial and emotional costs of a legal battle.
- You make your own decisions.
- Your continuing relationship as parents is likely to work better.
- You are able to move forward and make a new life for yourself.
- You set your time frame in which to settle the disagreement.
- You may improve communication with your former partner and be better able to resolve disputes in the future.

It is for these reasons that the Courts encourage people to avoid legal action where possible and try to resolve their dispute through mediation.

4 SERVICES FOR ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

The Family Court's mediation service employs Aboriginal and Torres Strait Islander family consultants in the Northern Territory and Far North Queensland. These consultants are Aboriginal or Torres Strait Islander people who are well known and respected members of their local community. They work with Family Court mediators in these locations to ensure that Indigenous families are able to effectively access and use the Court's mediation service. They also assist Indigenous families who might use the Federal Magistrates Court.

The family consultants also have a national role, in that they advise the Court about how to tailor its services to more effectively respond to the needs of Indigenous families. This is achieved through discussion with Indigenous clients, community representatives and Indigenous agencies. In this way the Court is able to plan and develop improved services for Indigenous families. Each of the family consultants works with one or more of the Court's registries in Australia, helping to build stronger relationships at the local level for Indigenous communities and the Courts.

Family consultants can be of help to Aboriginal and Torres Strait Islander families in a variety of ways.

Family consultants **CAN**:

- provide Indigenous clients with helpful information about the Court;
- assist Indigenous clients to tell their story when dealing with Court staff;
- educate Court staff about Indigenous culture and the needs of Indigenous families;
- assist Court staff in responding to the needs of Indigenous clients;
- provide support, assistance and advice to Indigenous clients when appropriate; and
- provide information regarding local resources and make referrals to other agencies as appropriate.

Family consultants **CANNOT**:

- give legal advice;
- represent you in court;
- speak on your behalf;
- take sides in any dispute;
- tell the Court what it should do;
- tell you what to do;
- talk to others about your case without your permission.

Family consultants may be able to attend a circuit with a judicial officer if requested in advance to provide the above service.

KUPAI OMASKER (TRADITIONAL TORRES STRAIT ISLANDER ADOPTION)

The Family Court will determine a Kupai Omasker case (traditional Torres Start Islander Adoption) on Thursday Island when the Court is on circuit in that location. It is an application by a party for the Family Court to give legal recognition to the Torres Strait Islander customary child rearing practice, namely the giving and receiving of children between Torres Strait Islander people.

Such an order does not change the name of the child on the birth certificate. This requires an adoption under a State or Territory Adoption Act or Court Order. The order does not cover inheritance rights for the child. More information can be obtained from the registries listed at right or from the Family Court's Practice Direction on Kupai Omasker, available on the website:

- **www.familycourt.gov.au**

CONTACTING THE FAMILY CONSULTANTS'

If you would like to talk to an Aboriginal and Torres Strait Islander family consultant please phone:

- **Darwin Registry**
  Family Court of Australia
  (08) 8941 2933
  1800 679 236 (NT only)
- **Alice Springs Registry**
  Family Court of Australia
  (08) 8952 8222
- **Cairns Registry**
  Family Court of Australia
  (07) 4041 2342
  1800 641 080 (QLD only)

If you are phoning from outside the area of the free call 1800 number then you may wish to phone the Registry and leave your name and contact number so that a family consultant can phone you back.

If you are from elsewhere in Australia you can also phone your nearest local registry (SEE CHAPTER 16 FOR DETAILS), and ask that contact be made with a family consultant for you.

5 SERVICES FOR CULTURALLY AND LINGUISTICALLY DIVERSE CLIENTS

The Family Court's National Cultural Diversity Plan 2004-2006 sets out the Court's commitments to culturally and linguistically diverse clients and communities.

The Court's goal is to ensure that the needs of people from the many and varied cultural and linguistic backgrounds, who make Australia such a rich and stimulating environment in which to live, are fully integrated into the mainstream of the Court's work.

Seven guiding principles underpin the National Cultural Diversity Plan:

PRINCIPLE 1	A commitment to identifying and addressing barriers that impede equal access to Court services. These barriers may exist in the physical environment of the Court, the way staff provide services and the Court processes themselves.
PRINCIPLE 2	A commitment to equity in all of the Court's dealings with clients.
PRINCIPLE 3	A commitment to ensuring that information about the Court is widely available across the community in suitable formats and delivered in culturally appropriate ways. This includes recognition of the need for freely available quality interpreter and translation services to clients.
PRINCIPLE 4	A commitment to the collection of client data on ethnicity and linguistic background as a critical tool in the tailoring of services to meet the needs of clients.
PRINCIPLE 5	A commitment to the development of partnerships with a wide range of client and stakeholder groups at the national and local registry levels.
PRINCIPLE 6	A commitment to providing appropriate and ongoing education to Court judicial officers and staff on the needs of clients from diverse cultural and linguistic backgrounds and the adoption of a partnership approach with community agencies in the delivery of such programs.
PRINCIPLE 7	A commitment to creating opportunities for feedback from clients, community agencies and stakeholder groups as a critical element in the design and review of all aspects of service delivery.

For further information about the actions the Court is taking to implement services relevant to each of these principles, obtain a copy of the Plan, from your local registry of the Family Court, or from:

- **www.familycourt.gov.au**, or
- by telephoning **02 62438747**

The Court's welcome brochure (SEE PAGE xiv IN THE INTRODUCTION SECTION) is available in 19 languages, either in hard copy on request or from the Court's website.

A substantial number of the Court's key information products are available in 10 key community languages:

- Mandarin
- Vietnamese
- Arabic
- Turkish
- Cambodian
- Spanish
- Serbian
- Russian
- Macedonian
- Polish

Brochures either translated or being translated shortly include:

- Marriage, families & separation
- Pre-action procedures - parenting orders
- Pre-action procedures - financial orders
- Mediation services
- Case Assessment Conferences
- Conciliation Conferences
- The Trial/Trial Notice
- Subpoena - information for named person
- Subpoena - persons requiring it be issued
- Parental responsibility and parenting orders
- Duty of disclosure

Community education strategies are also in development and a joint Family Court/Federal Magistrates Court DVD/ VHS information product should be released later in the year. It is expected to be available in a number of key languages.

6 WHAT ABOUT THE CHILDREN?

Separation or divorce does not normally end your involvement and responsibility as a parent. Before you separate, try to agree on:

- how your children will be looked after; and
- how they will see both parents.

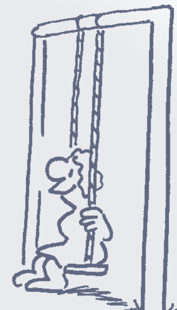
For example, you both could agree that the children could live with one parent for most of the time and spend the rest of the time with the other parent and other significant family members. If you live near each other you could agree that the children live some of the time with one parent and some of the time with the other.

If you can agree, there is no need to get Court orders. However if there is any subsequent disagreement, neither of you will have a legally recognised agreement capable of being enforced in the Courts. It may be wise to make your agreement legally binding. Detailed information about how you can make this happen is set out in Chapter 9 of this book. Although you can apply yourself, arrangements can sometimes be complex and you may need a lawyer to advise you.

If you are having problems reaching an agreement, you may wish to seek help from community-based mediation or counselling services. (SEE CHAPTER 16 FOR CONTACT DETAILS.)

The Family Court provides mediation in child-related matters without the need to file an application at some registries, namely: Albury, Alice Springs, Cairns, Canberra, Darwin, Dubbo, Hobart, Launceston, Lismore, Newcastle, Rockhampton, Townsville, Wollongong. In all registries of the Family Court and the Federal Magistrates Court, after you have filed an Application for Final Orders, Court ordered mediation is required, provided it is appropriate. (SEE CHAPTER 6 FOR FURTHER DETAILS.)

See also Chapter 2 – Before you file in the Family court – pre-action procedures and Chapter 3 on mediation services. The Family Law Rules 2004 introduced pre-action procedures that are required to be fulfilled before filing occurs in the Family Court. The aim of the pre-action procedure is to control costs and if possible resolve disputes quickly, ideally without the need to file an application.



The pre-action procedure generally applies to:

- anyone who is considering starting a case;
- anyone who would be named as a respondent if a case was started; and
- their lawyers (if they have one).

No longer partners … but continuing as parents

You both have obligations towards your children and share all responsibilities equally unless you agree otherwise or a Court makes an order which changes the responsibilities in some way. Parties often agree that the children will live mostly with one parent to minimise disruption to their lives.

Your children will worry less if you can agree and explain to them what is going to happen and why. You both should:

- reassure your children that you both still love them;
- remember that accepting and dealing with the separation yourselves allows your children to do likewise;
- let your children know that it is okay for them to have a continuing relationship with both of you and that they are not to blame for what has happened;
- try not to always take at face value what your children are saying, particularly in the early stages of separation – children will often tell you what they think you would like to hear when they feel divided loyalty to both parents;
- talk with the other parent about issues relating to your children;
- don't let your children hear or see you fighting;
- listen sympathetically to your children's feelings and opinions without judgment;
- keep your children out of your arguments;
- be positive about the other parent when talking to your children;
- turn to other adults for emotional support rather than your children;
- talk with your children's teachers so they understand the situation;
- help your children to discuss their feelings;
- keep your focus on your children's well-being rather than on what is 'fair' for you.

You might like to obtain a copy of the free book on parenting after separation '*Me and My Kids – parenting from a distance*'. It provides practical information for both parents, although the main emphasis is on separated parents who spend much of their time away from their children. Ask your nearest Court registry about this book if you would like a copy.

Children's reactions to separation

For children up to 5 years of age family breakdown can be difficult to understand. Older children can usually experience a time of confusion and uncertainty even though they are more able to understand what is happening.

Just as children have different personalities, children will respond to their parents' separation in different ways. Some will become:

- withdrawn and not want to talk;
- clingy and not want to be away from the parent;
- aggressive, rebellious, difficult to handle;
- more babyish or more adult in their behaviour.

Community-based counselling services are available to children if the children are having difficulties coping or do not want to see one of their parents. See Chapter 16 for contact details.

TIP

Parenting isn't easy. Parenting can be particularly hard and separated family situations can make it harder. You might find some helpful ideas in the book '*Me and My Kids – parenting from a distance*'. Parents who helped road test the book had this to say:

"It's good because you could both read this and think – that's fair. It's the little rule book."

"Things jump out at you because there's not a lot of writing, so it's really easy to read."

"You feel like you can pick it up and browse it, so you are more likely to read it to begin with. You don't feel like you have to read it from front to back."

ONGOING CONFLICT CAN AFFECT CHILDREN

After separation, children are sensitive to conflict between their parents. Exposure to serious and/or ongoing conflict in some cases can cause serious harm and constitute abuse of children.

While disagreement is normal in any family, ongoing conflict can have a harmful effect on children. It is not easy for children to enjoy both parents if the parents continue the same conflict that was typical of their marriage or relationship.

Evidence suggests that children's exposure to ongoing conflict may be detrimental to them in the long term. Eventually, children may develop poor ways of coping with the stress associated with this conflict by becoming rebellious, becoming distressed before or after being with the other parent or having problems at school.

Some children may even refuse to see or speak with one parent as a way of avoiding the conflict. However, if children are given the opportunity to maintain a positive relationship with both parents then they are more likely to adapt to their new lifestyle.

Continuing parent and child relationships after separation

Children have the right to benefit from continuing relationships with both their mother and father. Even if one parent cannot be with a child full time, the maintenance of the relationship means

the child does not 'lose' a parent or other significant family members.

Maintaining the relationship between parent and child after separation allows a child to:

- know who they are and where they belong with both their mother's and father's families;
- have a more realistic idea of their parents' strengths and weaknesses, and what they are and are not able to offer in the relationship with them and so avoid idealising either of their parents;
- share experiences, interests and abilities with a parent if they do not live with them; and
- talk about any difficulties they may have in the relationship with their parent – this avoids the possibility of the child or parent developing long-lasting negative feelings and attitudes.

This ongoing relationship is for the child's benefit, therefore any arrangements should be tailored to meet the child's needs, taking into consideration their age, feelings and family circumstances.

Sometimes it is necessary to alter arrangements to meet the child's changing needs. Arrangements suitable for a younger child are not necessarily suitable for an older child. As children get older, you need to consider any involvement they may have with sporting and other activities, and the time they need to spend with others their age.

Both parents, whether living with or away from a child, may experience positive as well as negative feelings about their relationship with the child.

After separation it is not unusual for both of you to feel:

- **satisfaction** in helping your children to maintain important family relationships;
- **relief** at having a break from childcare responsibilities or glad that it is a short-term responsibility;
- **fear** of being compared with the other parent or of rejection by your children;
- **loss** when the children are not with you;
- **irritation or resentment** because family life and relationships are disrupted;
- **anger** – if the other parent is seen as unreliable or prevents an ongoing relationship;
- **pleasure** from sharing activities and time when you are with your children;
- **confusion and uncertainty** about how to understand your children's behaviour.

Children are likely to feel:

- **happiness** at keeping their relationship with both of you;
- **relief** that the conflict associated with the separation is over;
- **fear** of separation from both of you and of rejection by you, your new partner or other children;
- **loss and sadness** about the family as it was;

- **anger**;
- **confusion**;
- **anxiety**;
- **conflict of loyalty**.

How you can help:

- allow your children the right to love both of you – don't make them choose;
- fit in with your children's needs as far as possible;
- keep arrangements consistent and part of a routine, yet be flexible when appropriate;
- give reassurance that you are okay when they are not there, and will be there when they return;
- show you understand their feelings towards you and the other parent;
- acknowledge the other parent's role and contribution to the children's lives;
- don't scold or question your children excessively about activities with the other parent;
- don't use your children as messengers or spies;
- don't put down the other parent – try to see the relationship as a normal and acceptable part of life for yourself and your children;
- don't bring up contentious issues with the other parent in front of your children.

If your child is really worried, upset or distressed you might wish to consider helping the child to talk to someone like a counsellor. But you should not arrange for this to happen without first discussing this with the other parent, if this is at all possible, and with the child's representative (lawyer appointed by the Court to represent the child), if there is one.

Grandparents

The Family Law Act recognises the importance of grandparents in shaping children's lives. Any person concerned with the care, welfare and development of a child – such as a grandparent – can apply for a parenting order covering, among other things, with whom a child will live and contact arrangements after separation. You do this by following the procedures set out in this book, as for parents.

In most cases grandparents are very important to the children. The fact that the parents cannot live together should not normally deprive the children of this relationship.

Child support may be available where a grandparent or other person has taken on some care of a child. SEE CHAPTER 8 FOR FURTHER INFORMATION.

Making your arrangements work

After a separation or divorce the needs of children will often vary. It is important to separate your needs from your children's needs. For example, you may feel you need to limit contact with your former partner while your children will generally need regular and frequent contact with both of you.

There are benefits for you when a child continues to have a strong relationship with both parents, eg. it gives both of you a break from child care responsibilities, whether your arrangements are for the child to spend several days a week with the other parent or weekends.

However, these can be difficult times. Changeover times, especially, can be painful. There are things you can do to help make your arrangements work in a positive way for all concerned. You should both:

- be committed;
- plan well ahead and make clear arrangements;
- be consistent and reliable;
- be flexible;
- take into account special occasions such as birthdays, long weekends, Mother's Day and Father's Day; and
- avoid setting up competing activities – it spoils your children's pleasure in being with the other parent.

Parental responsibility and parenting orders

The Family Law Act makes it clear that, unless a Court orders otherwise, each parent has parental responsibility for each of their children under 18 years of age.

Parental responsibility is not affected by any change in the parents' relationship, for example, if you separate or remarry. Neither is it affected by the fact that you never married the other parent of your children, or possibly you never even lived together.

This means that each of you has the responsibility for your children's welfare, either in the long-term or on a day-to-day basis, which includes matters such as where your children will live and with whom they will have contact.

Many separated parents agree about these arrangements and do not want or need Court orders. It will only be when you cannot decide these matters yourselves that the Court will make orders that change these responsibilities and stipulate which parent has what responsibilities. These orders are called parenting orders. There are four types of parenting orders:

- **Residence** – an order to say with whom a child lives, including any shared arrangements.
- **Contact** – an order to say the times that a child may have contact with a parent with whom they are not living, or anyone else who plays an important part in their life, such as a grandparent (contact can be either face to face, by phone, letters, or emails).
- **Child maintenance** – an order that provides for financial support of a child (but this does not apply to most children, who are covered by the Child Support (Assessment) Act).
- **Specific issues** – an order about any other aspect of parental responsibility (this may include the day-to-day care, welfare and development of a child, issues relating to religion, education, sport or other specific issue).

Residence, contact and specific issues orders replace the orders that were made under the previous law for custody, access and guardianship.

APPLYING FOR A PARENTING ORDER

A parenting order may be applied for by:

- either parent of the child;
- the child him or herself;
- any other person concerned with the care, welfare and development of the child (this may include grandparents or other members of the child's extended family).

WHAT ORDERS SHOULD YOU SEEK?

The orders you may need concerning your children will depend on the particular circumstances of your family. You should consider what you believe is in the best interests of your child. The Court, in making its decision, will be guided by what in the best interests of the child in the circumstances of your case. You may need legal advice about this, but some examples are given below as a general guide.

If you wish to have orders made about any specific areas of parental responsibility for the child such as schooling, health care and other matters you will need to apply for these by seeking an order. For example: that you be responsible for all decisions relating to the child's schooling and health care, and so on.

RESIDENCE ORDER

That the child XXX born YY/YY/YYYY reside with the ZZZ. OR

That the child XXX born YY/YY/YYYY reside with the ZZZ from 9:00 am Wednesday to 5:00 pm Tuesday each alternate week and with the PPP from 5:00 pm Tuesday to 9:00 am Wednesday each alternate week.

CONTACT ORDER

That the child XXX have contact with PPP as follows:

- by telephone on Wednesdays at 7:00 pm;
- from after school on Friday until before school on Monday each fortnight OR from 9:00 am until 5:00 pm each Saturday;
- half of all school holidays;
- on special occasion as follows:... (consider arrangements for Christmas day, birthdays, Father's day, Mother's day).

SPECIFIC ISSUES ORDER

- That the XX have sole responsibility for the child's day-to-day care, welfare and development; **OR**
- That the parent who has the care of the child from time to time be responsible for the child's day-to-day care, welfare and development.

AND

- That the parents have joint responsibility, in consultation with each other, for the decisions affecting the child's long term care, welfare and development. [This includes health, religion and education issues.]

WHAT IF WE AGREE ABOUT WHAT SHOULD HAPPEN FOR THE CHILD?

The Family Court and the Federal Magistrates Court encourage parents to agree about what arrangements should be made for children after separation. Agreements can be worked out between yourselves or with the help of family, child counsellors, mediators or lawyers. If you want the agreement to be made an order of the Court, you can apply for consent orders to be made.

In the Family Court you can apply for consent orders without having to actually go to Court. You can ask the registry staff at your closest Family Court to give you the Application for Consent Orders (Form 11) Kit. This can be completed by yourself or with the assistance of your lawyer if you have one. (DETAILS ABOUT HOW TO SEEK CONSENT ORDERS ARE SET OUT IN CHAPTER 9).

In the Federal Magistrates Court, you must file an Application and attach the agreement to it. You must attend the first hearing date when the Federal Magistrate will hear your application and, if satisfied with the agreement made, will make the orders you both seek. The Application form is available at all Courts registries or on the Federal Magistrates Court's website:

- **www.fmc.gov.au**

If you can reach an agreement between yourselves you may be more likely to abide by its terms than you would if one of the Courts imposed an order on you.

If you cannot agree, you can seek help from community based counselling or mediation services. The Family Court provides mediation in child related matters, prior to Court proceedings, in some registries: Albury, Alice Springs, Cairns, Canberra, Darwin, Dubbo, Hobart, Launceston, Lismore, Newcastle, Rockhampton, Townsville and Wollongong. (In other registries of the Courts, after you have filed an application seeking Court orders, mediation may be available.)

You may need to take more time to sort things out before asking the Court to decide what should be done.

If you still cannot agree, you may decide to make an application for Court orders. Chapters 11 and 12 of this book explain how you do this and how to manage your case. Although you can apply yourself, you may benefit from the help or advice of a lawyer.

If you are unsure about how to seek legal advice or choose a lawyer with experience in family law matters, the local law society, legal aid or a community legal centre in your State or Territory will be able to help. (SEE CHAPTER 16 FOR CONTACT DETAILS.)

Every family is different

Any arrangements you come to must be in the best interests of your children. It is equally important to realise that each family and its needs are different. Each case is unique and the Courts recognise this fact. Arrangements that have been made by other families may not be appropriate for the individual

circumstances of your family. Here are just some examples:

STEP FAMILIES

Some children may find it difficult to deal with the new members of a household. The family may need help from a community based counselling service or from the Family Court's mediation service in locations where this is available.

INFREQUENT CONTACT

A child may have had little contact with a parent since separation and may need gradual reintroduction to that parent.

FACILITATED CONTACT

Sometimes family or friends can make contact arrangements work more effectively by dropping off or picking up children or by attending visits between parents and children. This is often helpful for children and parents when conflicts between the parents are not yet resolved, or when the relationship between the parent and children is newly forming.

CONTACT AT SCHOOL OR DAYCARE

There are a number of school activities which both parents may like to attend such as sports days, parent teacher interviews, fetes and school productions. It is important that any order sought makes it clear if it is intended that a parent is to have contact with the child on occasions of this nature.

FAMILY VIOLENCE

The impact of family violence on children is an appropriate concern to raise when discussing contact. You must tell Court staff if there is a family violence order and you should tell the Court if there has been family violence involving you or the children.

Such violence includes not only direct harm caused to a child, but also indirect exposure such as a child witnessing an assault by one parent on another.

CHILD ABUSE

For some children contact may not be appropriate; in fact it might compromise a child's safety if a parent has behaved violently or otherwise inappropriately. The Court must consider what arrangements are in the best interests of each child, according to her or his particular circumstances.

If there is child abuse, you should file a Notice of Child Abuse or Risk of Child Abuse (Form 4) with the Family Court. The Court will refer the matter to the relevant State Authority and will consider if your matter should be treated as a Magellan matter. This will shorten the time until the trial. SEE PAGE 91 FOR MORE INFORMATION.

Supervised contact and contact centres

Supervised contact is when someone else attends during contact visits between a child and the parent with whom they are not living. This is done to provide an opportunity for a relationship to continue between the child and their

parent, while ensuring that the child is not exposed to inappropriate behaviour, or unduly stressful or emotionally distressing situations.

In some cases a supervisor can be a relative or somebody who is known to the family. If this is not possible, the person supervising can be a trained professional employed by a supervised contact centre.

Supervised contact is often needed when:

- there have been allegations of child abuse;
- a parent with whom the child lives has some concerns about the child's contact with the other parent; or
- there has been a long period of non contact between the child and the parent.

For example, supervision may be required during contact periods with a parent whose alcohol or drug consumption or whose emotional and mental stability is seen as a possible threat to the child. Asking a family member or a friend to supervise contact visits in these circumstances may not be acceptable to the Courts, as the person may not be neutral. They may not believe that supervision is necessary and may have difficulty intervening against the parent being supervised, even if it is needed.

HOW IS IT ARRANGED?

If you are in a situation where supervised contact is necessary it is generally helpful to talk with a trained professional such as a mediator, lawyer or a representative of a children's supervised contact centre.

Supervised contact can be agreed between the parents and does not necessarily require a Court order. However, if the Court has any concern regarding the child's safety, it will err on the side of caution and may order supervised contact. The order will stipulate the method of contact and the supervision required.

If supervision is required through a contact centre, you will need to get in touch with the centre to establish how the particular program works, the cost, the program's requirements, intake procedures and availability of places. It is advisable to obtain the information about costs and availability of places before the matter goes to Court and an order is made.

CONTACT CENTRES

A contact centre provides a safe, comfortable place for contact visit change-overs, and supervised contact visits. Centres are staffed by qualified trained people who are able to provide practical assistance and provide feedback and guidance to the adults involved about the quality of the relationships during contact periods.

Some contact centres are run by non-profit or community-based

organisations funded entirely by the Federal Government. There are also centres run as businesses by private individuals or organisations. Some of the government-funded programs provide a free service, however in general costs will vary according to the nature of the organisation and its funding.

The Australian Children's Contact Services Association provides details of supervised contact centres. The Association's contact details are listed in Chapter 16.

If supervised contact is needed but it is inappropriate that family or friends become involved or none is suitable and there is no contact centre nearby, you should contact the relevant Court registry and discuss your particular situation with a Court mediator.

Children and mediation

Children very rarely give evidence or attend Court. In some cases it may help the children if they are included in privileged (confidential) mediation with a Court mediator. Parents should discuss this with the Court mediator. Anything said in these sessions cannot be told to the Court.

FAMILY REPORT

Children may meet with a Family Court mediator in cases where a family report has been ordered. This report may be ordered to give the Court information about the family, particularly the children. Not all hearings involving child-related issues will need a family report.

In preparing a Family Report the Court mediator will spend some time with the whole family and alone with each child. This gives children the chance to let the Court know their thoughts and feelings. Court mediators are experienced in dealing with children and will allow each child to decide how much or how little they wish to say. They will not be asked to make decisions or choose between their parents.

The Court has brochures for children attending mediation or for a family report. Ask the registry for a free copy.

Representation of children in Court

In some cases involving children, the Court will order the appointment of a lawyer to represent a child separately. The separate representation will help the Court decide what is in the child's best interests. These appointees are known as 'child representatives'.

It is their role to make sure all necessary information is before the Court – this may include information that neither you nor your former partner would choose to raise yourselves. The child's representative will usually go to all hearings and conduct the case in a way that promotes the child's best interests.

The Court order appointing a child representative is referred to the Legal Aid Office of your State or Territory. The Legal Aid Office then instructs a lawyer to act as the child representative. Each party may be required to share the costs of the child's representative if they can afford it. If one parent is receiving

legal aid, their share of the child's representative's legal costs will also be covered by legal aid (SEE CHAPTER 11 FOR MORE INFORMATION ABOUT CHILD REPRESENTATIVES).

Parenting plans

Parenting plans are no longer used in the Courts. They cannot be registered in the Family Court. If you already have a registered parenting plan, you may revoke the plan by registering a revocation agreement with the Family Court.

Any agreement reached between the parents concerning their children are now to be formalised in consent orders. (SEE CHAPTER 9 HOW TO ENTER INTO CONSENT ORDERS.)

7 YOUR HOUSE, YOUR MONEY AND OTHER FINANCIAL MATTERS

When you separate, you will usually need to sort out how to divide your assets.

The Family Court and the Federal Magistrates Court offer a number of services to help you do this, as do a range of community-based organisations. (SEE CHAPTER 16 FOR FURTHER INFORMATION ON THESE ORGANISATIONS.)

You and your former spouse can agree on how your property should be divided without any Court action. However, if you would like your agreement formalised, you can ask the Court to make orders in the terms of your agreement.

In the Family Court, you do this by:

- applying for consent orders – SEE CHAPTER 9; or
- applying for property settlement and filing the terms of the agreement reached.

A deputy registrar will consider the matter in chambers (without your attendance at Court). If the terms are just and equitable and are within the powers of the Court, orders will be made.

In the Federal Magistrates Court, you can apply for property settlement and file the agreement reached. You will need to make an application and appear before a federal magistrate before orders can be made.

In financial matters the powers of the Family Court and the Federal Magistrates Court are limited to deciding matters arising between partners who have been married. Property disputes between partners in de facto relationships or same-sex relationships, must be dealt with by State Courts, applying the laws of the relevant state or territory.

TOOLS TO HELP YOU

There are various tools available that may help you when working out your financial arrangements. For example, the Child Support Agency website (**www.csa.gov.au**) provides various useful calculators including a living expenses calculator, a budgeting tool and a child support calculator.

Why settle?

There are numerous advantages in coming to an agreement without having to argue the matter in Court. It saves you time and money and you also know exactly what each of you will get as opposed to the uncertainty of having to wait for a judge or federal magistrate to decide the issues for you.

Lengthy Court proceedings can increase stress and add to the pressure that you and your family are under. Your legal fees will also be higher if you proceed to a trial. The earlier you can reach agreement, the lower your costs and the more that will be left, including for parents to share with their children.

WHAT IF YOU CAN'T AGREE?

If you can't agree, you can ask the Family Court or the Federal Magistrates Court to decide the matter. An application can be made any time after separation and even before you are divorced. However if you do divorce, your financial application should be made within 12 months of your divorce becoming final. After this time you will need the Court's permission to begin proceedings. This will require an application and evidence explaining why you have not done so within the time limit. The Court may refuse the application unless you or a child of the marriage will suffer hardship if permission is refused.

If you begin proceedings in the Family Court about your financial matters, you will normally be required to attend a Case Assessment Conference with a deputy registrar. The Case Assessment Conference is explained in Chapter 11 of this book. If it is not appropriate for you to attend a Case Assessment Conference, you will be given a date to attend an initial hearing called a Procedural Hearing conducted by a deputy registrar. You may also be required to attend an information session prior to your Procedural Hearing unless the Court gives you permission not to attend due to special circumstances, such as distance from the Court or fear of family violence.

In the Federal Magistrates Court your first Court event will be a Directions Hearing conducted by a federal magistrate.

Financial orders

Financial matters that can be decided by the Family Court and the Federal Magistrates Court include applications relating to:

- property – to say how your property, superannuation, financial resources and liabilities should be shared between you; and
- spouse maintenance – to provide financial support for a husband or wife, or former husband or wife.

The Federal Magistrates Court can only deal with property matters with a total value less than $700,000, unless both sides agree to a figure above $700,000.

LEGAL PRINCIPLES

The general principles applied by the Family Court and the Federal Magistrates Court in deciding financial disputes arising from the breakdown of a marriage are mainly based on:

- Working out what you've got and what you owe (ie. your assets and liabilities) and what they are worth at the time of the hearing.
- Looking at the history of the marriage and working out what contributions have been made by each of you. Contributions come in many forms such as financial and non-financial, and can be made directly or indirectly by you or other people on your behalf.
- Future requirements – taking into account things such as age, health, financial resources, care of children and ability to earn an income.

SUPERANNUATION

In December 2002 new federal legislation gave powers to the Courts to deal with superannuation as if it was property. Couples can also make agreements about the division of superannuation between them on marriage breakdown.

Couples can agree about how future payments of superannuation entitlements are to be divided between them.

If you cannot reach an agreement the court may make an order for superannuation payments to be made in the future to either spouse to be "split" between them. This is called a "splitting order". The court can only make orders which will take effect when a spouse is eligible to be paid his or her superannuation entitlements, for example, on retirement. The Family Court has a kit, the Superannuation Information Kit, which you may wish to obtain. However, please be aware, this is a complicated area of law. If possible you should obtain some legal advice before making any decisions about its division.

COURT'S DISCRETION

There is no formula used to divide your assets. No one can tell you exactly what orders the Court will make. The decision is made after all the evidence is heard and the law requires the Court to decide what is just and equitable, based on the unique facts of your case.

Conciliation Conferences (for financial matters)

Following the first Court event, parties in a financial case will generally be ordered to attend a Conciliation Conference. Conciliation Conferences offer the parties an opportunity to reach a settlement without going to a trial.

In the Family Court, a deputy registrar conducts the conference. In the Federal Magistrates Court the conference is conducted either by a deputy registrar or an experienced external lawyer.

The Conciliation Conference offers you and your former partner a valuable opportunity to work out an agreement about your house and money matters.

Its aim is to help you discuss matters and, if possible, reach an agreement on the financial issues arising from the breakdown of your marriage.

The deputy registrar or external family lawyer can tell you the options available to you in the light of the relevant law and previous decisions of the Court, but cannot impose a decision on you.

Attendance at a Conciliation Conference is usually compulsory for anyone involved in property proceedings in the Family Court or Federal Magistrates Court. If there are any family violence concerns inform Court staff and they can arrange for you and your former partner to be seen separately.

So that you can make the best possible use of the conciliation, certain matters must be sorted out beforehand. Make sure that you comply with all the instructions given to you beforehand. The Family Court's pre-action procedure and disclosure requirements introduced on 29 March 2004 by the Family Law Rules 2004 ensure that parties must have disclosed to each other various financial documents prior to the first Court event.

At the conclusion of the first Court event (a Procedural Hearing in the Family Court and Directions Hearing in the Federal Magistrates Court), further directions may be made, often about the following:

- Additional specified **documents** identified as relevant to the matter that you must disclose prior to the Conciliation Conference.
- **Valuations** – if you cannot agree on the value of an item belonging to either or both of you, you will be ordered to exchange evidence of value of the property. This could be:
  - ~ a written valuation from a qualified valuer;
  - ~ an appraisal from a real estate agent;
  - ~ a written opinion of value from a second hand dealer, or
  - ~ a written opinion from a car dealer; or
  - ~ a copy of the latest member's statement for your superannuation interests or a valuation from a qualified accountant if the superannuation interest is other than an accumulation fund or self-managed fund.
- **Furniture and sentimental items** – it will be a great help if, before the Conciliation Conference, you can agree how to divide these items between you. This will allow you to use the conference to concentrate on sorting out any issues, which remain in dispute.
- **Borrowing capacity** – if you want to buy out your former partner's interest in the home or other property, it is important to find out how much you are able to borrow (from a bank, credit union or relative for example) and that you are able to meet the repayments. If you do not have this information at the conciliation conference, it will make it more difficult to reach a settlement.

In the Family Court you are required to complete a document called 'Conciliation Conference Particulars'. This document must be exchanged with the other party and sent to the Court 7 days before the conciliation conference. The document is available on the Family Court's website or from the Court's registries.

The matters to be set out in the form include:

- your current financial circumstances;
- assets;
- liabilities;
- superannuation;
- financial resources;
- your contributions, expressed as a percentage of net value of the parties assets from commencement of cohabitation to date of separation and the present date.

You will need to briefly state matters relied upon in the light of:

- financial contributions;
- non-financial contributions;
- contributions to the welfare of the family.

You will need also to:

- refer to the other factors in Section 79(4) (d) to (g) of the Family Law Act to support any adjustment to be made to the contribution base entitlement above, expressed as a percentage of the net value of the assets of the parties;
- refer to any circumstance relevant to Section 79(2) to indicate that the order sought is just and equitable; and
- set out your proposals to resolve the matter, only for the purposes of the conference.

If you do not prepare this document and exchange it with your former partner, the conference may not go ahead and you may be ordered to pay your former partner's costs thrown away as a result.

The Conciliation Conference is held for your benefit and you are encouraged to be fully involved. If you go to the conference in a spirit of compromise and adopt a practical approach, you have a good chance of reaching a settlement.

Conciliation Conferences are usually held in three parts:

PART 1

Introduction – Usually you, your former partner and your lawyers (if any) will be present. You may, by leave of the Court, appear by telephone. The conference is conducted by a deputy registrar in the Family Court and either a deputy registrar or an external family lawyer in the Federal Magistrates Court (convenor). The convenor of the conference will explain what is to happen and a short discussion will take place about the matters in dispute. The convenor will then tell you how the settlement discussions will proceed.

The process adopted will depend on factors such as the need for separate interviews and the complexity of the financial circumstances of your case. You may speak to your lawyer (if you have one) at any time during the conference.

PART 2

Settlement discussions – Your lawyers (if any) may not necessarily be present for this stage. The convenor will assist you and your former partner in discussing ways to settle your dispute. You may speak to your lawyer during this stage if you wish – just let the convenor know.

PART 3

Conclusion – The lawyers (if any) will rejoin the conference and the convenor will sum up what has happened, highlighting matters which have been agreed. If you have reached agreement on all issues, your lawyers may prepare terms of settlement for you to sign so that the Court can make consent orders.

If you have been unable to reach final agreement, the convenor will give directions about what is to happen next. Depending on what issues are involved, the convenor may issue a Trial Notice in the Family Court. The Trial Notice will set out a timetable for the parties to follow to get the matter ready for trial. You may be given a date for a Trial by a judge, judicial registrar or federal magistrate. You may be directed to attend a pre-trial conference. THE PRE-TRIAL CONFERENCE IS EXPLAINED FURTHER IN CHAPTER 11 OF THIS BOOK. At the conclusion of the Conciliation Conference, the Conciliation Particulars Document required for Family Court cases will either be returned to you or destroyed.

REMEMBER

- It is vital that you make a full and frank disclosure of all facts and documents relevant to your application.
- Failure to do so can delay a settlement, result in increased costs or an order for you to pay your former spouse's costs. It may also lead to the Court making a greater order for a financial (property) settlement in favour of your spouse (or former spouse).

8 FINANCIAL SUPPORT

For your children

Both parents have a duty to support their children financially. This duty has priority over other commitments. It exists regardless of:

- who the children live with;
- whether the children are living in a household with one of their parents and his or her new partner;
- whether contact with the other parent is occurring.

Financial support for most children is covered by the Child Support (Assessment) Act. This will apply to your children if you separated on or after 1 October 1989 or if you have a child of the relationship born on or after that date. Under that Act, the financial support is called child support. You apply for child support through the Child Support Agency not a Court. (SEE PAGE 48 FOR MORE INFORMATION ABOUT THE CHILD SUPPORT AGENCY.)

For you

Under the Family Law Act a person has a responsibility to assist in the financial support of their spouse, that is their husband or wife (or former husband or wife), if the spouse cannot meet their own reasonable expenses from their personal income or assets.

Where the need exists, both husband and wife have an equal duty to support each other as far as they can. This obligation continues even after separation and divorce.

An application for financial support can be made to the Family Court, the Federal Magistrates Court or the State Magistrates Court. The extent of the support depends on what the other spouse can afford to pay. This means that the Court will take into account the needs of the person seeking the support and the other person's capacity to pay.

In applications for financial support, known as 'spouse maintenance', the Court will consider the following about you both:

- age;
- income, property and financial resources;
- capacity for employment;
- what is an appropriate standard of living;
- the extent to which a marriage has affected earning capacity.

The Court also takes into account with whom the children live.

Spousal maintenance orders can be registered with and collected by the Child Support Agency.

What about de facto relationships?

De facto partners cannot apply for spouse maintenance under the Family Law Act. Laws for de facto couples differ in each State and Territory and you should seek legal advice – SEE CHAPTER 10.

Court-ordered maintenance

Parents (or grandparents and other persons having care of the child) will generally need to apply for Court ordered child maintenance when none of the children in the family were born on or after 1 October 1989, and the parents separated before that date, or in some situations where the child is over 18. (For example: where the child is continuing in full time education).

In child maintenance applications the Court considers the proper needs of the children and then works out how much is reasonable for the person to pay. Some of the matters the Court considers are:

- the financial needs of the child (considering their age, education or training costs and any special needs because of a disability);
- the capacity of the child to earn income;
- the income, earning capacity, property and financial resources of each parent;
- the amount each parent needs to support themselves and any other person they have a duty to support (for example, a new spouse or other children);
- published research on the costs of maintaining children (available from all Court registries and on the Family Court's website);
- the amount the person would have to pay if the child support formula applied; and
- any other special circumstance that is relevant.

Orders for child maintenance can be registered with and collected by the Child Support Agency.

Child Support Agency

The Child Support Agency works out the amount to be paid by the other parent by using a formula, set out in legislation, based on taxable income, the number of children and the care arrangements for those children (an assessment of child support).

Parents have the choice of collecting child support from the other parent privately or they can ask the Child Support Agency to collect on their behalf. This applies if you have an assessment of child support or a Court order for child maintenance registered with the Child Support Agency.

It is important to tell the Child Support Agency of any changes that could affect your child support, for example if your income changes or if your childcare arrangements change. You can do this over the telephone (call 13 12 72) or email through the Child Support Agency's website:

- **www.csa.gov.au**

What if you can agree?

If you can both agree on what should be paid, then you can arrange this between yourselves, without a Court order. You may formalise your agreement in the form of a child support agreement, which can be registered with the Child Support Agency, if you so wish.

In working out an agreement, you may find it useful to include a review date so that if the agreement is not working as well as you hoped, it can then be reconsidered. Such an agreement is an inexpensive alternative to Court proceedings. You can obtain more information about this from the Child Support Agency's web site:

- **www.csa.gov.au**

You can also ask the Court to make orders in the terms of your final agreement by filing an application and then asking the judge or federal magistrate to make consent orders. You need to have fulfilled the requirements of the Child Support Assessment Act before filing an application with the Court.

It is also important to note that parents who receive more than the base rate of Family Tax Benefit (Part A) need to have their agreement approved by Centrelink before the Child Support Agency can accept the agreement:

- **www.centrelink.gov.au**

Applying for maintenance

If you are not eligible for a child support assessment, you can apply to a Court for a maintenance order by lodging an Application with the Court.

In the Family Court or a State or Territory Magistrates Court you file an Application for Final Orders (Form 1). In the Federal Magistrates Court you file an Application.

If you are being asked to pay maintenance, you can respond by filing a Response with the relevant Court. In the Family Court or a State or Territory Magistrates Court you file a Response to Application for Final Orders (Form1A). In the Federal Magistrates Court you file a Response.

You can file the application or response through a lawyer or by following the steps in the Family Court's *Maintenance Applications* brochure.

An application for maintenance for yourself must be made within 12 months of your divorce becoming final. After that time you will need to get special permission from the Court and this is not always granted (SEE PAGE 8).

PENSIONS AND BENEFITS

In deciding how much maintenance should be paid, the Court cannot take into account any money received by the child or the person with whom they live from an income-tested pension, allowance or benefit such as youth allowance and Austudy, Abstudy, unemployment benefits or supporting parents benefits.

However, payers of maintenance under an order who are receiving a benefit through social security income support scheme may apply to the Court to have any enforcement of the order by the Child Support Agency suspended while they are receiving income support.

VARYING A MAINTENANCE ORDER

You can apply to vary an existing maintenance order when:

- circumstances have changed since the order was made (for example, the circumstances of the child or person making or receiving the maintenance payments have changed, or the cost of living has changed);
- important information was not given to the Court at the time the order was made.

There are no time limits for applying to change an existing maintenance order.

9 CONSENT ORDERS

If you are able to come to a final agreement about what arrangements should be made for your children, how you might divide your matrimonial property or provide financial support for either partner, you may wish to formalise your agreement as an order of the Court.

In the Family Court, you can do this by applying for 'consent orders' to be made without having to attend a Court hearing.

In the Federal Magistrates Court, you need to file an Application with the Court and attend a Court hearing. (FURTHER INFORMATION IS IN CHAPTER 11).

DO-IT-YOURSELF KIT

The Family Court has a do-it-yourself Application for Consent Orders kit. The kit includes the form you will need called Application for Consent Orders (Form 11). Single copies are available free of charge from all registries of the Court or from the Court's website:

- **www.familycourt.gov.au**

How to apply for consent orders in the Family Court

Step 1 Obtain the Application for Consent Orders kit from the Family Court registry nearest to you or download it from the Family Court's website. Complete the form by typing or writing clearly the information required. Follow the instructions.

The applicant completes the parts relating specifically to the applicant (column 1) whilst the respondent will later complete the parts relating specifically to the respondent (column 2).

Step 2 Type the orders you seek in a draft Consent Order giving careful consideration to the information set out in the kit. Follow the format in the example provided to you when you obtained the kit. Give a separate paragraph to each order and number it. Each party should sign each page. The draft Consent Order should be dated on the last page.

Step 3 Attach your signed draft Consent Orders to the back of the application form.

Step 4 If you are applying for consent orders involving the splitting, flagging of superannuation interests or imposing an obligation on the trustee of the superannuation fund, there are special requirements to be met. A completed Superannuation Information Form (available from the Court) must be attached to the Application for Consent Orders.

The Trustee of the Superannuation fund, who will be ordered to put in place the orders relating to the superannuation fund of one of the parties, must be served with a signed copy of the draft Consent Orders at least 28 days prior to filing the Application for Consent Orders.

Step 5 At the end of the application (parts I and K) there are two affidavits. If you are the applicant the first affidavit called 'Affidavit of applicant' is your affidavit. If you are the respondent, the second affidavit called 'Affidavit of respondent' is your affidavit. You must complete your affidavit by marking each box, which applies to you with an [X].

Step 6 You need to swear or affirm your affidavit before a Justice of the Peace, lawyer or notary public.

If you do not know where to find such a person, ask the Court staff. Some registries provide a voluntary Justice of the Peace service.

Step 7 If you have sought independent legal advice about the orders you seek, your lawyer must complete the 'Statement of Independent Legal Advice' in the part following your affidavit.

Step 8 Make three copies of the draft Consent Orders. Certify each copy by attaching a page to the back of each copy stating: 'I certify that this is true copy of the draft consent orders signed by the parties.' Both the applicant and the respondent should sign that certification.

Step 9 File at the Court registry:

The original and two copies of your Application for Consent Orders (Form 11), along with all attachments and three certified copies of the draft Consent Orders. You may post the documents to the Court, but it is better if you can personally take them to the Court so that if there are any small problems with your paperwork, these can be fixed on the spot.

You must file the application within 90 days after the date on which the first affidavit was sworn or affirmed.

Step 10 After the Application for Consent Orders is filed in the Court it goes to a deputy registrar for consideration. If the registrar is satisfied that the orders are appropriate, the registrar will sign the certified copies of the orders. A sealed copy will be sent to each party.

If the registrar is not satisfied, a notice will be sent to each of you with a brief explanation as to why the application was rejected. There will be an opportunity for any problems to be corrected.

THINGS TO CONSIDER WHEN APPLYING FOR CONSENT ORDERS

The orders you may wish to seek concerning your children, property or financial support for either of you will depend on the circumstances of your family. You may need to seek legal advice about what orders you should seek.

Generally, consent orders that can be made by the Court fall into two groups – parenting orders (SEE CHAPTER 6) and financial orders (SEE CHAPTER 7).

It is important that you understand the meaning and effect of any orders you ask for. Even if you decide to make an application to the Court without the help of a lawyer, you should obtain independent legal advice about the effect and consequences of the orders you propose.

When considering an Application for Consent Orders, the Court has to be satisfied that the proposed arrangements are proper, just and equitable.

The matters the Court must consider when deciding this are set out in the Family Law Act. When you are making your arrangements you should consider these same criteria:

- if you want orders concerning children you must have first read and considered in particular section 60B, sections 65E and 68F of the Act;
- if you want property orders, you must have first read and considered, in particular, sections 79 and 75 and Part VIIIB of the Act; and
- if either of you seek spouse maintenance orders you must have first read and considered sections 72, 74 and 75 of the Act.

These sections are set out in the Court's Application for Consent Orders kit. Part VIIIB deals with superannuation and can be accessed on the Courts' websites. Copies of the Act are also available through some libraries and can also be accessed through the websites of the Family Court and the Federal Magistrates Court. ALSO SEE CHAPTERS 6, 7 AND 8.

Parents eligible to apply for child support may make an agreement and submit it to the Child Support Agency.

IS THERE ANYTHING CONSENT ORDERS CANNOT COVER?

YES ~ Consent orders cannot cover:

- child support for children covered by the Child Support (Assessment) Act – that is children under 18 who were born after 1 October 1989 or whose parents separated after that date;
- property and spousal maintenance between couples who have not been married ('de facto' couples) except in Western Australia;
- medical procedures;
- orders under cross vesting laws;
- step-parent maintenance, where the parties are a parent and a step-parent of the child; and
- a parenting order in favour of a person who is not a parent of a child.

WHAT IF THERE ARE EXISTING ORDERS?

You may also apply for consent orders to vary or discharge existing orders. This can also be done by using the Application for Consent Orders kit in the Family Court or by making an application to the Federal Magistrates Court.

If you will be applying to a Court or registry different from where the original orders were made, you must attach a copy of the original orders you are varying or discharging, to the application for Consent Orders.

WHAT IS THE STATUS OF CONSENT ORDERS?

Consent orders have the same legal force as if they had been made after a Court hearing.

In the Family Court, consent orders are usually considered 'in chambers', that is in the office of a registrar. In the Federal Magistrates Court, consent orders are considered in an open court by a federal magistrate.

If the orders you seek are inconsistent with a family violence order between either of you or any of your children then your application must be heard in open Court. In that case you may need to consider submitting a different type of application. You should contact your nearest registry or seek legal advice before proceeding any further.

10 DE FACTO RELATIONSHIPS

At the time of printing (June 2004), issues arising from the breakdown of a de facto relationship – **except those about children** – are not dealt with in the Family Court, the Federal Magistrates Court or the State or Territory Magistrates Court.

The powers of these Courts are found in the *Family Law Act 1975*. The Act deals with all issues relating to children following the breakdown of a relationship (whether the parents were married or not). The Act also deals with property matters following the breakdown of a marriage.

The Family Law Act is a federal Act and applies nationally, regardless of the State or Territory in which you live.

CHILDREN

The Family Law Act applies to all issues relating to children following the breakdown of a relationship whether the parents are married, have lived together in a de facto relationship or never lived together.

All parents have the same responsibilities for their children and all children have the same rights regardless of the parents' marital status or their living arrangements – SEE CHAPTER 6.

CHILD SUPPORT

The duty of both parents to provide financial support for their children applies equally to parents who have been in a de facto relationship, were married to each other or have never lived together.

As for all children, financial support for children born outside of marriage is covered by the Child Support (Assessment) Act and Family Law Act (SEE CHAPTER 10).

In Western Australia the child support scheme operates slightly differently for unmarried parents. You should inquire with the Child Support Agency about these differences.

You should also be aware that if an order is made under State legislation for maintenance for a de facto partner, the Child Support Agency cannot enforce the order.

SPOUSE MAINTENANCE

De facto partners cannot apply for spouse maintenance (financial support) under the Family Law Act. You should seek advice regarding the relevant law where you live.

However, an application can be made under the Family Law Act for the biological father of a child, who is not married to the child's mother, to make a contribution for:

- financial support for the mother for the period surrounding the birth;
- the reasonable medical expenses related to the pregnancy or birth; and
- any funeral expenses of the mother or child if either dies during pregnancy or childbirth.

PROPERTY

How issues relating to your property or assets and money matters following the breakdown of a de facto relationship will be dealt with differ depending on the State or Territory in which you live.

Some States and Territories have specific legislation which governs how property matters arising from the breakdown of a de facto relationship are dealt with. Other States rely on civil law principles.

The States have referred their powers over de facto property to the Federal Government. At some stage we can expect the Family Law Act to be amended to enable the Courts to deal with property matters for de facto couples. Check the Courts websites for up to date information or ask staff at the Court's registry.

Family violence

The Family Court and the Federal Magistrates Court have no power to make family violence orders covering couples in de facto relationships, this is handled by a State or Territory Court. SEE INTRODUCTION.

11 HOW THE COURTS MANAGE CASES

Family Court

When parties have been unable to reach agreement, one of them may file an application to the Court. For a small percentage of parties this will lead to a hearing (known as a Trial) before a judge. If you are in this situation the Court will implement its 'case management' approach to how it helps people in dispute about family matters to reach agreement.

A Trial will only take place after all avenues of reaching a negotiated agreement have been tried. Just how long the process takes will depend on your individual situation. However, you should be aware that under the Court's case management system, if you and your former partner are not able to negotiate a settlement along the way, it may be some time before you reach the stage of a trial before a judge.

PRE-ACTION PROCEDURES

Parties are expected to comply with the pre-action procedures set out in the Family Law Rules 2004 (see Chapter 2 for full details). The aim is to encourage parties to resolve matters without having to resort to a judge to impose a decision on them. Pre-action procedures apply to both financial and parenting matters. The two Family Court brochures (*Before you file pre-action procedure for financial cases* and *Before you file pre–action parenting orders*) explain the Court's requirements).

There are exceptions to the pre-action procedures as set out in Chapter 2. An example would be in situations of urgency requiring an interim order from the Court.

INTERIM ORDERS

If you are unable to agree about short term arrangements for the care of children or some financial matters then you may need to make an application to the Court seeking 'interim orders'. Interim orders are orders which will continue until there is another order of the Court.

You must file an Application in a Case (Form 2) together with your Application for Final Orders (Form 1). Depending on the circumstances of your case, your matter may be listed for an interim hearing or a Case Assessment Conference. At the Case Assessment Conference a mediator in children issues or a deputy registrar in financial issues, will assist the parties to reach an interim agreement, thus avoiding the need to go to a judge for a decision. If parties cannot agree, the matter is listed shortly thereafter before a judge for an interim decision based on the affidavit material filed.

If your problem is urgent because children are at risk of harm, or property or assets may be disposed of, then the application will be dealt with by the Court as soon as practicable.

Your lawyer or Court staff at your nearest registry can tell you about the current process and forms needed to apply to Court. Reaching agreement about short-term arrangements will, in most cases, be in your and your children's interests. Court staff can advise on what is available at the Court and in the community to help you to achieve this.

You should also consider seeking legal advice. Unnecessary or inappropriate interim applications can increase the costs and length of your case.

Personal safety

The Court will provide a safe environment for the resolution of your case.

If you are afraid or anxious about attending any court session with your former partner or any other person, please telephone the Court to discuss other arrangements or tell Court staff on the day if safety concerns arise while you are there.

THE SYSTEM IS FLEXIBLE

The Court's case management system is flexible and able to provide for a greater number of mediation type 'events' if this will allow you and your former partner to reach a negotiated settlement. Such an approach has some major benefits for clients:

- With the involvement of the Court's mediation staff, it allows you to reach agreement about arrangements for the future. Experience shows that where you have come to agreement in this way, both parties are more likely to stick with the agreement.
- It will cost you less – in financial terms, in emotional terms, and in time.

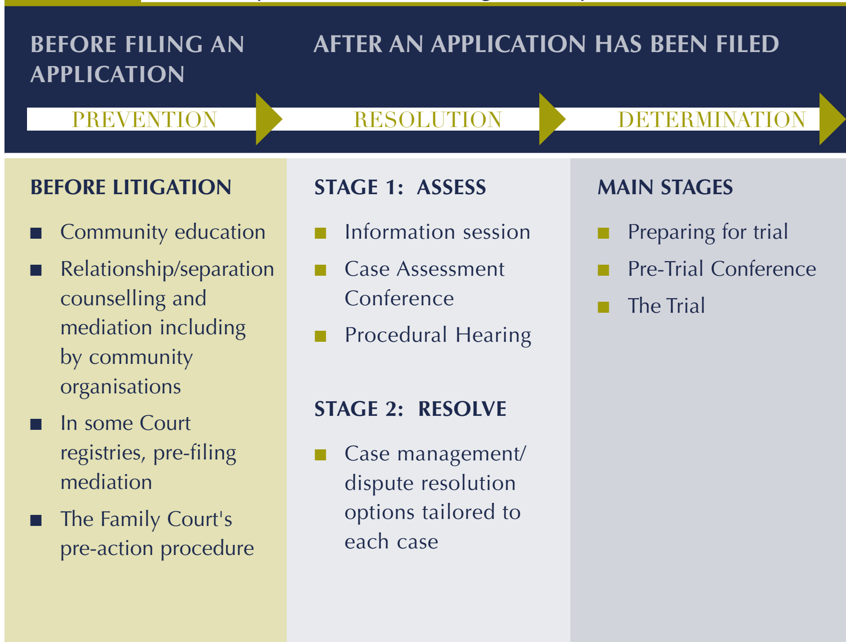
However, the Court also recognises that, for some clients, a Trial will be the only way in which decisions will be made. In these situations – for about 6 per cent of people who come to the Court for assistance – the Court's case management system provides a clear 'path' towards a trial.

This chapter outlines the main stages of the case management system that you may experience once one of the parties has filed an application with the Court. Figure 4 opposite summarises the key elements of the Family Court system.

The more detailed chart on the fold-out of the inside back cover of this book shows the key Family Court 'events' in both the Resolution and Determination phases of case management. A full explanation of the management system, known as the Case Management Directions, can be viewed on the Court's website:

- **www.familycourt.gov.au**

The aim of the Directions is to help all those who use the Court's services to achieve a timely resolution of their dispute in a manner which is prompt and economical and also best manages the Court's workload.



While it may look confusing, just remember that if you do need to follow any of these steps, Family Court client services staff, mediators and deputy registrars (Court lawyers) will be there to explain what is happening and what is likely to happen next. Don't forget that you can settle at any time. Remember that the further you proceed along the case management pathway, the more likely it is that you will incur financial and emotional costs. However sometimes this is unavoidable.

There are some important things to remember about managing your case:

- At any stage in a dispute the Court's mediation services can be used, as appropriate, to help couples avoid further legal action.
- Most people who come to the Family Court for assistance when agreement cannot be reached in other ways do not need the services of a judge – they reach agreement before that stage is reached, often involving only two or three of the available steps.
- You are expected to attend every session the Court asks you to, regardless of whether you have a lawyer.
- A fee will apply if your case is set down for a Trial – SEE CHAPTER 14 FOR DETAILS.

Privacy

The Family Court of Australia treats seriously your right to privacy and information security. The *Privacy Act 1988* applies when the Court deals with administrative matters. When the Court collects information for purposes that are not administrative, such as to exercise its jurisdiction, other laws protect it. These include the *Family Law Rules* which limits access to Court files, and the *Family Law Act 1975* which restricts reporting of proceedings.

Filing an application and what then happens

To begin legal action in the Family Court either you or your former partner must file an application. It is wise to consult a lawyer at an early stage, before filing an application with the Court. The form you must use depends on the issues you wish to resolve. Registry staff can assist in providing single copies of forms. Forms may also be obtained from the Family Court's website:

- **www.familycourt.gov.au**

INFORMATION SESSION

Your first court event will usually be the Information Session. This is a short general introduction to the Family Court. No confidential or personal issues are discussed – any such questions can be discussed with the deputy registrar or Court mediator during the Case Assessment Conference. The Information Session looks at:

- separation and common emotional experiences when relationships break down;
- the needs of children, and the responsibilities of parents after separation;
- how Family Court mediation services may help to resolve disputes and build parenting skills;
- the issues concerning the division of property under the *Family Law Act 1975*;
- how the Family Court operates and in particular, what happens on this first day at Court; and
- the role of lawyers and how best to use their services.

When a date is given for a Case Assessment Conference, parties are generally also directed to attend an Information Session, often held on the same day before the Case Assessment Conference. In those cases not allocated a Case Assessment Conference the parties will be advised of the date and time when Information Sessions will be conducted.

CASE ASSESSMENT CONFERENCE

This is the first major event most people will attend at the Family Court after documents have been filed. The Case Assessment Conference usually follows a group Information Session and concludes with a Procedural Hearing.

The Case Assessment Conference may be conducted with both parties together, or separately.

NOTE The Court has services available in some registries for people from culturally diverse backgrounds. Ask Court staff about these. Interpreter services are also available but advance notice is required so that an interpreter can be booked to come to your Court event.

NOTE The Court has services available in some registries for Aboriginal and Torres Strait Islander people. Ask Court staff about these.

The most important purposes of the Case Assessment Conference are that the Court will assess the main issues of the case, target future services of the Court to meet the needs of the case and provide an early opportunity to reach agreement with the aid of an officer of the Court.

The Case Assessment Conference is occurring because either you or your former partner has started proceedings in the Family Court. The person who starts the proceedings ('the Applicant') must immediately 'serve' upon the other person (the 'Respondent') their documents 'filed' with the Court. These documents generally are:

- an Application for Final Orders (Form 1) or an Application for Final Orders and An Application in a Case (Form 2);
- any affidavits (written sworn statements) that are made supporting the Interim Orders being sought in the Form 2; and
- if there are financial issues, a Financial Statement Kit (Form 13).
- various Court brochures, including these:
  - ~ *Duty of disclosure;*
  - ~ *Mediation Services - Pathway to Agreement*;
  - ~ *Marriage, Families and Separation*; and
  - ~ *Case Assessment Conference.*

The person 'served' with the documents ('the Respondent') must prepare a written response to the documents served. This will involve:

- completing a Response (Form 1A); and, where there are financial issues, a Financial Statement (Form 13);
- if interim orders have been sought:
  - ~ a Form 2A (Response to an Application in a Case);
  - ~ affidavits; and
  - ~ where there are financial issues, a Financial Statement (Form 13) if this has not already filed.

These documents must then be filed with the Family Court and 'served' upon the 'Applicant' or their lawyer (if they have one) at least 7 days before the Case Assessment Conference, Procedural Hearing or hearing to which the response relates.

There is more information about 'service' later in this Chapter. The Court also has a kit on service, available in hard copy from Court registries or from the Court's website:

- **www.familycourt.gov.au**

Property cases

At least 2 days before the first court date in a property case, each party must, as far as practicable, exchange with each other party, a copy of the following:

- the party's 3 most recent taxation returns and assessments;
- documents about any superannuation interest (if any), including a copy of the trust if a self –managed fund;
- financial statements, depreciation schedules, taxation returns, balance sheets for the last 3 years of any entity the party has an interest in, including a corporation, trust or partnership;
- any business activity statement for 12 months before the first court date; and
- appraisals (written evaluations) of any item of property in which the party has an interest.

If you reach agreement before your Case Assessment Conference, please tell the Court, so that someone else can use the time allocated to you.

During the Case Assessment Conference:

- you will have the chance to try to reach agreement;
- the Court will assess the main issues and facts of the case, and where appropriate recommend other services targeted to each case, such as further mediation or progression to a hearing; and
- the Court will explain what will happen next and how the Court process works.

The Case Assessment Conference is privileged. This means that you cannot tell the judge or registrar what you discussed in the conference except in limited circumstances.

Where the case is about children the Case Assessment Conference will be convened (chaired) by a mediator. Where it is financial (money and property) matters that are causing disagreement, it will be convened by a deputy registrar. If it concerns children's and financial issues, a deputy registrar and mediator will convene the conference together.

If an agreement is reached at the Case Assessment Conference (most likely in the form of consent orders approved by a deputy registrar) then neither person has to attend any future Court events.

Where agreement is not reached, there are various options open about what should happen next. For instance, further dispute resolution sessions might be proposed or, where it seems unlikely that further progress will be made, it might be proposed that the case progress directly towards a decision by a judge. This means your case will go on the path towards a Trial.

Exactly what course you take from here will be determined by the nature of your case.

At filing some cases will not go to a Case Assessment Conference, but are placed in the deputy registrar's Procedural Hearings list. There are a number of factors that may lead to there not being a Case Assessment Conference. The Court's Case Management Directions

(on the Court's website) set out when cases will not go to a Case Assessment Conference.

PROCEDURAL HEARING

If you attend a Case Assessment Conference the Procedural Hearing is held either straight after the Case Assessment Conference or later in the day if it looks like you and your former partner may be able to reach agreement through further discussions during the day. A deputy registrar conducts the Procedural Hearing, with a mediator present if there are child-related issues involved.

At the Procedural Hearing, the following may happen:

- any agreement reached during the Case Assessment Conference may be made into legally binding orders of the Court; and/or
- orders are made setting out the next step and what must be done to prepare for this.

If your case is not allocated a Case Assessment Conference, then the Procedural Hearing is usually the first time your matter will come before the Court. The date for this hearing is set when the application is filed. This will not be the Trial date.

Procedural Hearings are held with a deputy registrar and you attend with your lawyer, if you have one. At this hearing you will be encouraged to negotiate with your former partner and even settle the matter there and then.

Many people do resolve the matter at this stage and the deputy registrar is able to make orders reflecting the agreement you have reached provided that it is fair to each of you.

If you don't reach agreement on all the matters the deputy registrar will help you explore options for resolving areas of dispute and tell you what other steps you may need to take, including any papers you may need to file to allow your case to move on to the next step.

Exactly what course you take from here will be determined by the nature of your case. The deputy registrar will discuss the facts of the situation and any differing views you have about the facts. This may involve looking at the needs of your children and various valuations of property.

If your case relates to children and if you haven't been to mediation or further mediation is required, the deputy registrar will make an order for you to attend mediation.

If your case is of a financial nature and it is appropriate to do so, the deputy registrar will order you to attend a Conciliation Conference.

MEDIATION ABOUT CHILD-RELATED ISSUES

If you need the Court's further help to settle arrangements in relation to children, you will usually be asked to attend mediation. Court mediators, who conduct the mediation session, can guide you through discussions on separation issues and your children's needs.

Usually only you and your former partner attend. However, sometimes it may be appropriate for other significant people to be involved in these sessions. Children can also be involved when appropriate. This will be decided by the mediator in consultation with the parties.

CONCILIATION CONFERENCES FOR FINANCIAL CASES

This usually involves both of you and your lawyers (if any) attending a conciliation conference with a deputy registrar to try to resolve disputes in financial matters (SEE CHAPTER 7). This service is only available after an application has been filed and the conference is ordered by the Court.

The deputy registrar talks with you about the options available in light of the provisions of relevant legislation and previous decisions of the Court.

THE TRIAL NOTICE

The Trial Notice is issued because conciliation and/or mediation have not resolved the dispute between you and your former partner (see the diagram on the inside back cover which will show where your matter has reached). Your case is now on track to be heard before a judge or judicial registrar in a Courtroom.

The Trial Notice sets out orders the Court has made about preparing your case for the Trial. These may be wide-ranging and they must be complied with (obeyed). The first order is for you (and your lawyer, if you have one) to attend a Pre-Trial Conference. The orders will also require filing and service, by specified dates of:

- any amended application (and response by the parties);
- further disclosure of documents if relevant;
- appointment of a single expert witness to value any item of property of which the value is still disputed;
- all affidavits of the evidence-in-chief of all witnesses in your case.

The orders will set a date by which you must have obeyed the orders and lodged a Compliance Certificate. The certificate confirms that you have complied with all of the orders in the Trial Notice and that the case is, on your part, ready for trial.

If you (or the other party) do not file the Compliance Certificate, or if you (or the other party) file the Compliance Certificate but indicate that directions have not been complied with, the Pre-Trial Conference date will be cancelled. In this situation the Court may deal with your case in a number of ways including placing the case in the Court's Defaulters List.

Please note that the consequences of not following the orders may be severe.

THE PRE-TRIAL CONFERENCE

The Pre-Trial Conference is held to decide whether your matter is ready for trial, and if it is, to set a date for the Trial – usually about 4 to eight weeks later.

The Pre-Trial Conference is convened by a deputy registrar (a Court lawyer) and it involves all parties (including lawyers where they are involved). More information about preparing for the Pre-Trial Conference can be found on the Court's website, in the Case Management Directions.

THE TRIAL

The Trial is the final hearing of your dispute. It is before a judge or judicial registrar who, after hearing all arguments and from all witnesses, will make a decision and orders that will finalise the matter.

It is important to remember that your case will be different from any other you may have heard about and you may have more or fewer attendances at Court than those described above depending on the issues and dynamics of your case.

Court forms

The Family Law Rules set out what has to be done if you are involved in a family law matter including, among other things:

- the type of form to use;
- the information to be given;
- time limits; and
- documents that need to be served.

These things are covered in more detail later in this Chapter.

Some of the more commonly used family law forms are listed below. As the Court continues to review its procedures, forms are also reviewed and may be changed. You may need to complete one of these revised forms instead. Court staff can tell you what forms to use to make an application or response to an application that has been filed with the Court.

Commonly used forms:

- Form 1 – Application for Final Orders.
- Form 1A – Response to Application for Final Orders.
- Form 2 – Application in a Case (including interim orders).
- Form 2A – Response to Application in a Case.
- Form 11 – Application for Consent Orders.
- Form 13 – Financial Statement.

Case summary document

Although not a 'form' as such, the Case Summary Document is nevertheless an important one that may be prepared in your case. Its purpose is to provide an agreed chronology (time line) of your case and how it is proceeding. In particular it will set out:

- agreed background facts; and
- issues.

In cases concerning children it should record relevant matters (both agreed and disputed) that the Court is required to consider in determining the best interests of a child or children.

In financial cases it should record matters of contribution agreed and disputed, and matters in relation to 'other factors' both agreed and disputed.

If there is a Case Summary Document its preparation will commence at the first court event (such as the Case Assessment Conference or Procedural Hearing) and if necessary will be updated at the next and any subsequent court event at which all parties are present. It will initially be prepared by Court staff and will be maintained by the Court until the Trial Notice is issued. It will be added to and amended from time to time during the progression of your case.

At the Pre-Trial Conference an order will be made for the preparation and filing of a Joint Case Summary Document.

Federal Magistrates Court

FILING AN APPLICATION

The Federal Magistrates Court has been established to provide a simple and accessible set of procedures for resolving disputes. There are two basic forms – the application and the response. These forms (as well as those cited below) are available at the court registry or website:

- **www.fmc.gov.au**

All proceedings will be commenced by an application. At the time of filing an application, the applicant must also file an information sheet.

Each application or response is to be filed with an affidavit that is to set out the fundamentals of the applicant or respondent's case. This will enable some matters to be determined on the first court date.

MEDIATION BEFORE THE FIRST COURT DATE

If an application is issued relating to children's matters the parties will be ordered to their first court date mediation. Upon filing an application an order is made by a deputy registrar requiring the parties to attend mediation. A letter is printed advising each of the parties of their appointment. These letters are sent to the applicant who retains one and serves the other on the respondent.

WHAT HAPPENS ON THE FIRST COURT DATE?

In most cases the Federal Magistrates Court will endeavour to allocate an early hearing date with only one court date prior to the final hearing.

The Federal Magistrates Court operates what is known as a docket system which means that the application will usually remain before the same federal magistrate from the first court date to final hearing.

At the first court date the Court may give directions, order the parties to mediation, fix a date of hearing, conduct an interim hearing or finally determine the application. The parties and their legal representatives are required to attend Court and must have a good knowledge of the case.

Applications that relate to property may be sent to a Conciliation Conference prior to the date fixed for the hearing of the application.

Applications that relate to children's matters may be ordered to primary dispute resolution at either a Family Court mediation section or a community based organisation prior to the date fixed for the hearing of the application.

INTERIM HEARINGS

The Court may conduct an interim hearing that deals with all or part of an application and make orders that are effective until the matter can be finally determined. Interim orders are temporary orders that are made to ensure that neither party gains an unfair advantage before the final hearing. These orders generally allow liberty to apply which allows the matter to be brought back before the Court prior to the final hearing if necessary.

An interim hearing can be heard on the first court date if the matter is urgent and the Court has the time to hear it on the day. If the Court cannot hear the interim matter on the first court date then a date of hearing will be fixed.

The Federal Magistrates Court aims to limit the number of interim hearings in preference to giving a matter an early final hearing.

FINAL HEARING

The final hearing is the hearing that will finally determine the application. This hearing will normally have been booked in with the Court some time prior. It is important that the parties have attended to all procedural matters and complied with all Court directions prior to this date.

HOW TO END A PROCEEDING EARLY

A party may discontinue an application or a response by filing a notice of discontinuance in accordance with the prescribed form. A party discontinuing an application or part of an application may be liable for costs.

SUBPOENAS

A party wishing to issue a subpoena seeking the production of documents or the attendance of a witness will need to have the permission of the Federal Magistrates Court. A party may request the issue of a subpoena on the first court date to ensure matters are properly before the court for the final hearing.

A subpoena requiring the production of documents can be made returnable at any time fixed by the Court. A subpoena requiring the attendance of a person must be made returnable on a day the proceeding is listed for hearing.

A party is limited to issuing 5 subpoenas in a proceeding unless the Federal Magistrates Court directs otherwise.

BENCHMARK OF TWO DAYS HEARING

The Court has adopted a benchmark of two days hearing as the primary indicator for hearing a family law matter itself or transferring the proceedings to the Family Court. With few exceptions, the practice of the Court is that it will not retain longer matters in its lists.

Occasionally, the Court will retain a longer matter because, for example:

- the complexity of the matter becomes apparent only in the hearing; or
- it is in the interests of justice for the Court to continue to hear the matters notwithstanding the hearing time required.

This policy will be applied flexibly by the Court.

RULES

The conduct of proceedings in the Federal Magistrates Court is controlled by the Federal Magistrates Court Rules 2001. The Federal Magistrates Court will apply the rules of court flexibly and with the objective of simplifying procedure to the greatest possible extent.

CONSENT ORDERS IN THE FEDERAL MAGISTRATES COURT

Consent orders may be filed on or prior to what is known as the first return date (when the case is listed for its first Court event, whatever that might be). The Federal Magistrates Court does not have power similar to that conferred on the Family Court. Accordingly Form 11 Applications for Consent must be filed in the Family Court. All consent orders filed in the Federal Magistrates Court must relate to applications already filed.

TELE-CONFERENCING AND VIDEO LINK FACILITIES

The Federal Magistrates Court will use tele-conferencing and video link facilities where appropriate, in order to facilitate the effective management of cases filed. These facilities may also be used to assist parties who have difficulty in attending court, callovers and any other appropriate situations.

JURISDICTION OF THE COURT

The Federal Magistrates Court has jurisdiction to deal with all types of family law applications other than annulment, adoptions and property applications where the property value exceeds $700,000. Litigants may consent to the Federal Magistrates Court having jurisdiction to determine property matters that exceed $700,000.

WHAT HAPPENS IF COURT DIRECTIONS ARE NOT COMPLIED WITH?

It will always be possible for a party to bring a matter back to the Court after the first court date if there is non compliance with procedural matters or Court directions. Parties are encouraged to ensure that compliance occurs to minimise the number of times that the parties need to attend court.

CAN I GET ASSISTANCE FROM THE COURT?

The Federal Magistrates Court will provide practical assistance about court procedures to litigants, so that cases can be resolved as speedily as possible. The Court cannot give you legal advice, as the Court cannot be seen to act in the interests of one person against another.

Preparing for a Trial in the Family Court

These pages set out the things you will need to know and do to help you prepare your case for a trial in the Family Court.

THE PRE-TRIAL CONFERENCE

You will usually be asked to attend a Pre-Trial Conference with a deputy registrar. This conference has these objectives:

- to determine if your case can be resolved by agreement; and if not
- to set a hearing date, if your matter is ready for Trial;
- to direct parties to prepare certain documents before the hearing; and
- to prepare a draft Trial Plan which will enable the Court to allocate sufficient time for the hearing of your case.

At the Pre-Trial Conference the deputy registrar will identify the issues that are and are not in dispute and will explore the prospect of settlement. As a draft Trial Plan will be prepared you will need to be able to advise the deputy registrar the amount of hearing time you estimate the trial will take. In appropriate cases, consideration will be given to ordering an extended Family Report (SEE PAGE 72).

The Pre-Trial Conference will be conducted in a conference room in the deputy registrars' section of the Court.

The deputy registrar will also allocate Trial dates. It is important therefore for you to make an assessment of how many days your side of the case will take.

Remember, you can negotiate a settlement at any time, and with both sides present the Pre-Trial Conference offers a good opportunity to try to settle your matter prior to it being set down for trial before a judge.

If there is a belief that there is a good chance of resolving the dispute, the deputy registrar may encourage you (and your legal representative if you have one) to continue settlement talks, however the deputy registrar may not necessarily be available to take part in these negotiations.

If the matter is settled on the day of the conference, the deputy registrar can make consent orders to finalise your case.

Remember:

- The majority of all disputes (about 94%) are settled without the need for a Trial.
- Every case is different.
- You can settle at any time.
- You can use the Court's mediation services to work out an agreement yourselves if appropriate.

WHAT TO DO BEFORE THE PRE-TRIAL CONFERENCE

A checklist - are you ready for the Pre-Trial Conference?

Have you:

1. Complied with all of the orders which require you to do something in the Trial Notice?
2. Lodged your Compliance Certificate with the Court by the date set out in the Trial Notice? Lodgement can be by fax, over the counter or by mail.
3. Considered how much time you think will be needed to present all of the evidence to support your case at the Trial (this will be discussed at the Pre-Trial Conference and incorporated into a draft 'Trial Plan')?
4. In children's matters, considered whether an extended Family Report will be required?

WHAT HAPPENS WHEN A DATE IS SET FOR THE TRIAL?

You must comply with the directions for Trial made by the deputy registrar at the Pre-Trial Conference. The orders will include:

- the filing of a Joint Case Summary document not less than 2 working days before the start of the Trial; and
- the filing of the Summary of Argument also not less than 2 working days before the start of the Trial.

JOINT CASE SUMMARY DOCUMENT

A Joint Case Summary document is not required for children only cases or matters listed for trial for less than 3 days.

The Joint Case Summary document will be prepared in first draft by the applicant and provided to all other parties not less than 14 days before the first day of Trial. Amendments are to be noted and the draft returned to the applicant no less than 7 days before the first day of Trial. The first draft must be sent to all parties to sign and returned to the applicant within 2 clear business days. Parties may sign counterparts of the document. The applicant will file the final version no less than 2 clear business days before the first day of Trial. Where the applicant is a self-represented litigant, the deputy registrar may vary the process for the preparation of the Joint Case Summary document

The case summary must include a short history of the relationship, details of any children, details of violence orders (if any), the procedural and case history of the case, agreed and disputed background facts and a list of affidavits. It must set out the current financial circumstances of the parties.

In parenting cases the background facts should include the agreed and disputed s68F (Family Law Act) matters (which relate to how the Court determines what is in a child's best interests). In property settlement cases the background facts should include agreed and disputed matters of contribution and other factors.

More information about the Joint Case Summary can be found in Attachment E to the Court's Case Management Directions, to be found on the Court's website:

- **www.familycourt.gov.au**

SUMMARY OF ARGUMENT

In parenting cases the Summary of Argument must set out:

- your proposals for the children;
- the matters you assert are relevant under s68F(2) of the Family Law Act (which relates to how the Court determines what is in a child's best interest); and
- the findings you say the Court should make about each of those matters.

In property settlement cases the summary must set out:

- an assessment of contributions from the date of commencement of cohabitation to the date of trial, expressed as a percentage of the net value of the assets;
- the contributions made under s79(4)(a),(b) and (c) of the Family Law Act, and the findings you say the Court should make in relation to each of those matters;
- an assessment of the adjustment which you assert the Court should make by reason of the matters referred to in s79(4) (d),(e),(f) and (g) expressed as a percentage of the net value of the assets (you must also include in whose favour the adjustment should be made);
- the matters referred to in s79(4) (d),(e),(f) and (g) which you say the Court should take into account, and

the findings you assert the Court should make in relation to each of those matters; and

- the effect the orders sought would have on the financial position of each party.

The summary must also set out any propositions of law relied upon, along with the names of cases (ie. earlier family law cases that have established precedents that you will be relying upon at the Trial).

More information about the Summary of Argument can be found in Attachment F to the Court's Case Management Directions, to be found on the Court's website:

- **www.familycourt.gov.au**

What if a Family Report or Expert's Report has been prepared?

In matters involving children, the Court may decide, of its own motion or on application of a party, to order that a family report be prepared. This is to assist the judge or magistrate at the Trial. The preparation of a Summary Family Report will be ordered at the time the Trial Notice is issued. The Summary Family Report will be available to the parties for their consideration prior to the Pre Trial Conference.

Where a family report is ordered a Court mediator will write it, subject to any specific directions from the judge, magistrate or deputy registrar. The mediator who prepares the family report will not be the one who assisted with mediation. This is because the Family Law Act (section 19N(2)) prohibits evidence being given about anything said during mediation. The report writer may also be a private report writer commissioned by the parties or by the child representative.

The report writer may interview all parties, who are subject to their Court hearing, their children and others who may be involved substantially in the lives of the children. The report writer may make recommendations about where the children should live or how much contact they should have with a parent.

The report will be used as evidence in the case.

Before attending the Pre-Trial Conference, you should carefully consider whether the recommendations in the Summary Family Report can help you and the other parties to resolve the matter. If not, you need to consider if an extended Family Report is required for the Trial. You should be ready to talk about this at the Pre-Trial Conference.

The Family Law Rules also provide for an external Expert's Report to be ordered in relation to the children or parents. This may be prepared by an expert such as a psychiatrist or psychologist.

You can arrange for the expert who wrote the report to go to the Trial for questioning (cross-examination) by contacting the expert and arranging for them to come to Court. You will have to pay their costs for the time they spend preparing the report and coming to Court.

Q What are my rights concerning the extended family report or expert report?

A You will receive a copy of the report before the Trial, and at the Trial you will have a right to question the mediator or expert about the report.

What if there is a child's representative?

If a child's representative is appointed in your case they will be responsible for helping the judge or magistrate make a decision which is in the best interests of the child. They will do this by making sure all necessary information is before the Court.

The child's representative must be involved in all settlement negotiations and will need to approve any proposed arrangement which affects the child.

You must make sure that the child's representative is given a copy of all the papers you file or that you intend to use at the hearing.

The child's representative may need to arrange for reports to be prepared by experts, other than the Court mediator who wrote the family report. This may involve only the child or may involve the whole family. You will need to cooperate with the child's representative in all requests made of you for such purposes.

The expert report requested by the child's representative will be filed in the Court for the Trial and you will be able to ask the expert relevant questions about it. You must tell the child's representative before the hearing that you wish to do this so that the expert is available to attend.

The Family Court's website provides further information about the role of the child representative or you can ask the Court registry for a copy of the information if you do not have access to the internet.

TIPS ON PREPARING FOR THE TRIAL

When preparing for the Trial you should start from the point:

- 'This is the outcome I am seeking from the Judge'.

Then prepare evidence to prove the facts necessary to establish why the Judge should grant what you want. (This is because you cannot introduce new evidence when you get to the closing address stage at the Trial.)

The evidence in affidavits and other documents must be clear. It must also be what is known as 'admissible' under the 'rules of evidence'. (Remember: The affidavits will be filed prior to the Pre-Trial Conference.)

The Trial

The Trial will be before a Family Court judge, federal magistrate or judicial registrar in the formal setting of a Courtroom.

AFFIDAVITS, EVIDENCE AND WITNESSES

The judge, magistrate or judicial registrar hearing your case will use the facts in your affidavits to understand your case. Affidavits may also be sworn by other people in support of your case. People who do so are called 'witnesses'.

The affidavit

Q What can I say in the affidavit?

A The affidavit is a statement of facts. It should set out observations without colour or qualifying comments. For example, the sentence "He approached me in a threatening way." might seem to be an observation. In law, it is a summary, a comment and a conclusion that has 'coloured' the word 'approached' in a significant and subjective or personal way. The person could have said:

> "He approached me waving his fist in my face. He was very red in the face himself and he was shouting and appeared to be out of control."

This would have recorded the observations of the witness and be used to persuade the judge or magistrate later that the judge or magistrate should conclude that the person described had been 'threatening'.

Conversations should be set out in the first person. That is, so far as it is possible the actual words used should be recorded. If the person making the affidavit cannot remember the exact words, he or she should set out in the affidavit something like: "She then said something to the effect of: 'I think you are a wonderful father to my children".

It should not contain a person's argument or set out why the Court should make the orders sought. Nor should it:

- Draw conclusions based on observations - eg. 'These incidents show that she was not a caring and loving mother.'
- Summarise in a general way things that have happened - eg. 'He was continually violent towards me.' This is a summary rather than an observation. What acts are said to have been violent? What does 'continually' mean in this context?

Generally the affidavit should not set out the opinion of the person making the affidavit. The exception to this is where the person who is giving the evidence is doing so as an expert (eg. he/she is a licensed valuer and that is the reason for that person to be giving evidence).

Q Can I give evidence of what another person told me?

A This is what is known as hearsay evidence and generally, a witness cannot give evidence of what another person told him or her. The main reason why hearsay evidence is excluded is because it cannot be 'tested'. The person who made the original statement is not present to be cross-examined.

This raises what is known as the hearsay rule. Simply expressed, the rule is that evidence cannot be given of statements other than statements made by a witness giving evidence in the proceedings, to prove the existence of a fact asserted in the statement. Suppose a case involves allegations that a father had abused a child. The mother takes the child

to a doctor, who examines the child and says to the mother that he, the doctor, thought the child had indeed been abused. The mother cannot give evidence of that statement by the doctor to prove that the child had been abused: that would be prevented by the hearsay rule. (The best way to deal with this would be for the doctor himself to give evidence about what the examination revealed).

Suppose, however, that after the statement by the doctor, the mother refused to allow the father to have contact with the child. The mother could give evidence about what the doctor said to her: not for the purpose of showing that the father had abused the child, but for the purpose of explaining why she stopped contact. This is an example of a statement that does not fall within the hearsay rule because the evidence is not to prove the truth of what is asserted in the statement (that the child had been abused), but for another reason (in this example, to explain why the mother took action to prevent contact).

There are exceptions to the hearsay rule. The two most important exceptions for family law purposes are that evidence may be given of what was said by another person in the presence of the other party (The other party can then if necessary give evidence to rebut or contradict what is alleged to have been said. It is 'fair'.)

The other main exception is that the *Family Law Act 1975* provides in section 100A that evidence may be given of what a child has said to a witness about a matter relevant to the welfare of that child or of another child.

Q What does an affidavit look like?

A The paragraphs of the affidavit must be numbered and the pages should also be numbered. It is helpful if the affidavit is divided up into sections under headings, eg. 'The children's wishes.'

ATTACHMENTS

Frequently an affidavit refers to other documents (eg. a contract). Often it is helpful to attach such a document, so long as it is admissible (according to the rules of evidence), as this may save time and lend credence to the narrative of the affidavit. It also helps to order and organise the evidence and sometimes it will resolve some point and reduce the scope of the dispute.

Q Should I number the attachment?

A Yes, and if there are several attachments the numbering should run from the first page of the first attachment to the last page of the last (ie. say from page 1–24, not three separately numbered documents of 1-8 pages each).

Q What is relevant?

A Before determining if a piece of evidence is otherwise admissible a Court must be convinced that the evidence is relevant. Something is relevant if it proves (or tends to prove) something which is significant to the issues to be decided by the Court, or which may affect the credit (the believability) of a witness.

Evidence is relevant if it establishes one of the factors important to the final decision. For example, evidence which presents information to the Court about one of the factors set out in section 68 F(2) would probably be relevant in a parenting case. Similarly, evidence which presents information to the Court about one of the factors set out in section or 79(4) would probably be relevant in a property case.

Sometimes a test of relevancy is to ask what 'finding' the Court will be asked to make at the end of the case. Credit (believeability) questions are really directed to providing reasons to the Court to disbelieve a witness (one of the functions of cross-examination). Discrediting a party is rarely accomplished by asserting that a person is a liar. If the person can be shown to have made prior inconsistent statements, this would normally strengthen a submission (argument) that this witness may not be telling the truth.

NOTE This brief explanation is not intended to supply all information about affidavits. The Family Law Rules 2004 and the Federal Magistrates Court Rules 2001 contain information and the Evidence Act (Commonwealth) 1995 should also be consulted.

WHAT IF A PERSON WHO CAN HELP YOU WON'T COME TO COURT?

If someone can tell the Court facts or bring documents to the Court that will help your case, but that person will not agree to come to the hearing, you may ask the Court to issue a Subpoena.

A subpoena can be used to:

- get a person to give evidence (tell the facts);
- to get a person to produce documents to the Court;
- to get a person to give evidence as well as bring documents to the hearing.

You can ask the Court to issue a subpoena on your behalf to individuals or a designated officer of a company. To do so you complete the Subpoena document (Form 14) and file it with the Court at least 7 clear days before the trial along with a covering letter explaining why you want it issued. The registrar will decide if it is proper to make the person do what you ask and will also check that you have properly identified the person you want to come to Court and that you have clearly set out the documents you want.

Once the Court issues the subpoena you must immediately serve it on the person so that they have enough time to do what is asked of them. Court staff can tell you how to arrange this. See also the information on page 83 about 'service'. When the subpoena is served the person must also be given an amount of money called 'conduct money'. The amount must be:

- sufficient to meet the reasonable expenses of complying with the subpoena;
- at least equal to the minimum amount mentioned in Part 1 of Schedule 4 of the Family Law Rules.

A named person responding to a subpoena to give evidence or give evidence and produce documents is entitled to be paid a witness fee by the issuing party (set out in part 2 of Schedule 4) immediately after attending court in compliance with the subpoena.

Questioning a witness

You may want to question a person who has signed an affidavit in support of the other party's case. This process is called 'cross-examination'.

To do this you will need to make a formal request to the other party (or their lawyer) that they make sure the people who have sworn affidavits for them are available to come to Court so you can question them.

You should make this request well before the Trial. If you do not make this request they may not be available to come to the hearing. If you make this request and they do not come, you can ask the judge or judicial registrar not to rely on the facts in their affidavits.

What to do in Court

These points have been prepared for people attending a Family Court Trial without a lawyer. The Family Court's website also has a step-by-step guide which visually covers many of these points.

WHAT TO DO:

- Find out from the court staff when there are trials being held and attend at least one to find out what happens in Court.
- Introduce yourself to the uniformed court officer and tell them you are there to observe and learn for your coming trial.
- It is a good idea to arrive at least 15 minutes before you are due to appear in Court.
- If you have any questions about the Court room in which your hearing is to take place, a Court officer will be able to help you.
- When you arrive on the Court floor, give your name to the uniformed Court officer.
- You will need to let the Court officer know that you do not have a lawyer with you.
- You may sit at the back of the Court room and watch other proceedings, or wait outside until you are called.
- You should be aware that a number of cases are listed on any one day and you will be required to wait until your case is reached – use the time while you are waiting to talk about the matter with the other party or their lawyer if there is one to try to reach an agreement.

- Do not attempt to converse with the other party if there is a family violence order in place.
- When your case is due to be heard, the Court officer will call your name and ask you to stand at the Bar Table.
- The person hearing your case will usually be a judge, magistrate or judicial registrar – if your case is a maintenance matter or interim children's matter it may be heard by a registrar.
- A judge or magistrate should be addressed as 'Your Honour', a judicial registrar as 'Judicial Registrar' and a registrar as 'Registrar' – in Court, they sit at what is known as 'the Bench'.
- Please stand when you are speaking.
- Have all your documents with you and in date order so that you can find them easily – one suggestion is that you create your own ring-binder file or some other way of keeping them together in date order.
- The judge, judicial registrar, magistrate or registrar controls the way in which each person conducts their case during the Trial.
- At the beginning of the Trial some initial things may be dealt with such as the reading of all documents by the person hearing your case and rulings on any legal objections to any facts in affidavits – any documents brought to Court under subpoena may be looked at.
- At any time during your Trial the Court may allow a brief break ('adjournment') so that you and the others involved can get together and talk about the matter to see if you can come to an agreement yourselves.
- The applicant will put their case first, followed by the respondent.
- The rules of evidence govern the kind of facts you can put to the Court – the rules that relate to a hearing in the Family Court are contained in the Family Law Rules and the *Commonwealth Evidence Act 1995*. If your case is in the Federal Magistrates Court you may need to read that Court's Rules, as well as the Evidence Act.
- The person hearing your case will not normally allow you to put additional facts from a witness at the Trial as all facts should be in the affidavit (written statement) filed by that witness – however, if an important matter has been left out in error or an event has occurred since the affidavit was filed and it is important for the Court to know, you may ask for 'leave' (permission) to ask your witness further questions before they are cross-examined.
- Cross-examination is the process by which you ask questions of each other's witnesses – after each of your witnesses is questioned by the other party you can ask the witness further questions of your own to clarify any matters that may have been raised.
- After all of the witnesses have been questioned, you have the opportunity to summarise all the matters you say the Court should accept in support of your case – this is called a closing address and will include any legal matters, such as cases that have already been decided on similar issues ('precedents') and relevant sections of the Family Law Act.

- After hearing from all of you the judge, judicial registrar or registrar will make orders and you should make a note of them – ask for the orders to be repeated if you do not understand them.
- A judge or judicial registrar may give a 'judgment' (decision) on the same day as the Trial or may hold over the decision to another day to allow reasons for the decision to be written, usually within about 3 months – if this is the case, you will be told of the day and time that the judge will give the decision (you will receive a copy of the judgment and orders made).
- Once your Trial is over you will be told that you are free to go.

WHAT NOT TO DO:

- Do not leave mobile phones switched on.
- Do not place bags, cases or parcels on the Bar Table.
- Do not bring food and drinks into the Courtroom.
- Children under 18 are generally not allowed into the Courtroom.

Orders and decrees

Once a decision has been made about your case, the Court will automatically send out a copy of any order or decree made free of charge. It will be sent directly to you or your lawyer if you have one. A second copy can be obtained from the records section of the registry where the Court proceedings took place.

Registries will charge for retrieving copies of orders and decrees from the records section. Higher rates apply if the documents have been placed in storage or if you need them urgently. There is also a charge for copying documents.

Requests for extra copies must be made in writing. You should include details of your file number and the date on which the order or decree was made.

Check directly with the registry for the current charges.

Appeals

An appeal is a procedure which enables a person involved in legal proceedings to challenge a decision made by the Court. You should always get legal advice before lodging an appeal. Appeals are very technical in nature and you will be ordered to pay the other parties legal costs if you do not succeed on appeal.

The Courts have two brochures which provide more information about appeals. Please obtain these, from your nearest registry or off the website.

APPEALS AGAINST A DECISION MADE IN A FAMILY LAW CASE IN A STATE OR TERRITORY MAGISTRATES COURT

These are heard by a Family Court judge and the case is re-heard from the start. You need to lodge a 'Notice of appeal (Form 20) with a registry of the Family Court and pay a fee (SEE CHAPTER 14). This

must usually be done within a month of the original decision. Family Court staff can tell you about the steps involved.

APPEALS AGAINST A DECISION MADE BY A FAMILY COURT REGISTRAR OR JUDICIAL REGISTRAR

These are called 'reviews' and are heard by a Family Court judge – you need to apply for a review by lodging a 'An Application a Case' (Form 2) in the registry where the decision was made. Please note that the time limits are 7 days or 28 days. There is no fee. Court staff can tell you about the review process, including time limits. The filing of an application to review an order does not operate as a stay of the order.

APPEALS AGAINST A DECISION MADE BY A FAMILY COURT JUDGE

These are heard by a panel of three or more judges, called the Full Court. A Full Court appeal is not a re-hearing of the original dispute and to succeed you must convince the Full Court that:

- there were fundamental procedural irregularities; or
- the trial judge was wrong as a matter of law; or
- there was a significant error as to the facts; or
- the result was plainly unjust.

This hearing will generally end the appeal process. A Full Court decision can be appealed in the High Court of Australia but only in extremely limited circumstances.

Before deciding whether to appeal it is important to be aware of the costs involved. They include the application fee and the cost of a transcript (written record) of the original hearing. A transcript for a full day can cost in excess of $1000. If your appeal is unsuccessful you will also have to pay some or all of the other party's costs of the appeal which can run into thousands of dollars.

To begin, you need to lodge a 'Notice of Appeal' (Form 20) and pay a fee (SEE CHAPTER 14) within 28 days of when the order being appealed from was made or such further time as a judge allows. In some cases you must first get 'leave' (permission) to appeal. Even if you plan to conduct an appeal yourself it is important to get legal advice on whether you have valid grounds (reasons) for an appeal.

The Full Court does not consider any evidence or information that was not before the trial judge except in special circumstances. The Full Court reads all the relevant documents lodged for the original hearing as well as the relevant parts of the transcript and listens to legal argument from both sides. Witnesses are not called to give evidence.

It is up to the appellant (the person seeking the appeal) to convince the Full Court that the trial judge made an error of such significance that the decision should be set aside. In order to do this you must persuade the Court that the trial judge:

- applied a wrong principle of law; or
- made a finding of fact or facts on an important issue which could not be supported by the evidence; or

- exercised their discretion to arrive at a decision which was clearly wrong.

A finding of fact is, for example:

- a finding that a certain event did or did not occur;
- that something was said or not said; or
- that something has a certain value.

An appeal will not succeed if the error relates to a minor or unimportant matter.

A judge exercises a discretion when the result of the case does not depend on a fixed rule. In these cases the judge weighs up a number of different factors, all of which are of some relevance to their decision.

To succeed on an appeal it is not enough for you to show that another judge might have formed a different view on the facts or decided the case differently. For example:

- in a property or maintenance case there is a margin within which the Court may have a range of decisions open to it – all of which will be legally valid or acceptable;
- in cases relating to arrangements for children, such as with whom they will live, matters may be so finely balanced between the parties that the judge could decide in favour of either party, without being in error in a legal sense.

If the trial judge accepted the evidence of one party in preference to that of the other party, the judges of the Full Court will be reluctant to take a different view because, unlike the trial judge, they do not see and hear the parties or their witnesses giving evidence.

If your appeal is successful the Full Court may:

- make a different order from that made by the trial judge or
- order a 'retrial' (another hearing) by a single judge.

It is also possible for the Full Court to find that, although the trial judge made some errors, they came to the correct conclusion and so the appeal should be dismissed.

Appeal procedures brochure

The Family Court has two brochures concerning appeals – one the general procedures and the other for appealing decisions of federal magistrates. Single copies are available free from all Court registries.

APPEALS AGAINST A DECISION MADE BY A FEDERAL MAGISTRATE

These are heard by the Full Court, however the Chief Justice or a judge nominated by the Chief Justice can determine that the jurisdiction of the Court in relation to the appeal will be exercised by a single judge. The majority of appeals against decisions made by a federal magistrate are determined this way. The procedures for appeals determined by a single judge are different to those for appeals to be determined by the Full Court. Court staff can explain the procedures to you.

Although the procedures are different to appeals against the decision made by a Family Court Judge the considerations set out in the section (ON PAGE 80) headed 'Appeals against a decision made by a Family Court Judge' apply equally to appeals against decisions made by a Federal Magistrate. The Family Court also has a brochure titled *Appeals procedures – from decisions of Federal Magistrates.*

Legal advice

You do not have to have a lawyer if you are involved in a Court matter, however it may be in your interest to do so. Court staff can explain procedure to you but they cannot give you legal advice.

The Court provides a number of do-it-yourself kits and its application forms are designed in plain language, many with an easy to follow check-the-box format, to make the process easier for people who choose to apply to the Court without the help of a lawyer.

Even though you may wish to apply on your own you may benefit from seeking legal advice at various stages to make sure you understand the orders you or your former partner are seeking and the impact they will have.

You can obtain legal advice from a number of sources. Private lawyers can be hired at your own expense, although some do give an initial free consultation. Your local law society will be able to help you get in contact with those who have experience in family law matters.

Legal advice is also available in some cases from:

- Aboriginal and Torres Strait Islander Legal Aid offices;
- Community Legal Services;
- a State or Territory Legal Aid Commission;
- a State or Territory Law Society or Association.

Each of the above will usually be able to provide some free advice and you should check what free services are available directly with them (SEE CHAPTER 16 FOR CONTACT DETAILS).

Free advice is also available in some instances from:

- chamber magistrates – local Courts;
- duty lawyers – some Court registries.

ROLE OF LAWYERS

Lawyers are a positive resource and can provide a variety of expert services. They can:

- give legal and practical advice;
- negotiate on your behalf;
- act on your behalf.

HOW TO BEST USE YOUR LAWYER

It is your case and your lawyer works for you. You should ask questions about anything you do not understand. It is equally important that your lawyer understands what you want, so give clear instructions.

Lawyers usually charge by the hour and, if you have to go to Court, may engage a barrister (also known as 'counsel') to argue your case before a judge. Ask the lawyer what the charges will be.

It is a good idea to ask your lawyer to put the agreed charges in writing. This is known as a 'Costs Agreement' – see Chapter 13 for more details about these agreements, lawyers' charges and costs disputes.

Information about lawyers' charges is also available in a Family Court brochure called 'Cost Notice'. It includes a list of current rates. Your lawyer must give you a copy of this brochure when discussing charges.

Service

When you make an application to the Court, it is essential that the respondent (the person against whom you seek orders) knows that the application has been made and what you have said in the application. This is done by a procedure known as 'service'.

Service is the legal term to describe the giving of documents by one party to another. It means giving the other party a copy of your documents in a way that satisfies the Court that the other party has received them. This is particularly important if the other party does not attend Court. If the Court is satisfied that the other party has received the Court documents and is aware of the proceedings the case may proceed without them being present and orders may be made.

When making, or responding to, an application in the Family Court or Federal Magistrates Court, you will usually be asked to give an 'address for service of documents'. This is the address for all official papers relating to the matter to be delivered.

Service in the Family court

SPECIAL SERVICE

In the Family Court certain documents must be served by special service:

- Application for Final Orders (Form 1);
- Application in a Case (Form 2, filed at the same time as a Form 1);
- Application for Divorce (Form 3);
- Subpoena (Form 14);
- Application – Contravention (Form 18);
- Application – Contempt (Form 19);
- Brochures required to be served with above forms;
- Affidavits or other documents required to be filed with above forms;
- An order made on application without notice.

If a document is required to be served by special service, the person on whose behalf the document is served must satisfy the Court that the person served actually received the document, unless this is admitted (under Rule 7.05).

The following are each methods of special service.

- **By hand**

  You may arrange for a process server (for a fee) or any other person over 18 to hand deliver the documents for you. Process servers are listed in the Yellow Pages. The Subpeona, the Application–Contravention and the Application–Contempt must be served this way.

- **By post or electronic communication (fax or email)**

  Do not use this method of service unless you are confident that the other party will sign the Acknowledgment of Service (Form 6) and return it to you. If you choose to serve by electronic communication, you must include a cover sheet (the Court's Service Kit has a step-by-step guide which gives more information about the information that is required on the cover sheet).

  If you attempt service by post, fax or email and the Acknowledgment of Service is not returned to you, your application may be delayed and it may be necessary to arrange for further copies of the documents to be served on the person. If service is by post you must include a self-addressed, stamped envelope (for the return of the Acknowledgment of Service).

TIP

The Court's Service Kit provides a step-by-step guide to the stages of Special Service.

- **By service on a lawyer**

  A document is taken to be served by special service on a person if:

  ~ a lawyer representing the person agrees, in writing, to accept service of the document for that person; and

  ~ the document is served on the lawyer and the lawyer acknowledges service.

SPECIAL SERVICE ON PERSONS WITH A DISABILITY AND PRISONERS

There are special requirements when a document is required to be a served by special service on a person with a disability or a prisoner.

SPECIAL SERVICE ON A PERSON WITH A DISABILITY (RULE 7.09)

The document must be served:

(a) on the person's case guardian;

(b) on the person's guardian appointed under a State or Territory law; or

(c) if there is no one under paragraph (a) or (b) – on an adult who has the care of the person.

NOTE: the person in charge of a hospital, nursing home or other care facility is taken to have the care of a person who is a patient in the hospital, nursing home or facility.

SPECIAL SERVICE ON A PRISONER (RULE 7.10)

The document must be served on the person in charge of the prison.

Note that when serving an application, subpoena or notice of appeal on a prisoner, the prisoner must be informed in writing about the requirements to attend Court by electronic communication under Rules 5.07, 12.12(4), 16.10 or 22.41, as applicable.

ORDINARY SERVICE

If a document is not required to be served by special service, it may be served on a person by ordinary service. This means the documents can be served:

- by all the methods of special service, but you do not need to obtain a signed Acknowledgment of Service (Form 6) from the other party; or
- at a person's contact address (address for service) in Australia by delivering it, posting it or sending it by electronic communication to that address; or
- if a person does not have a contact address (address for service), by delivering it, posting it or sending by electronic communication to their last known address.

WHAT YOU WILL BE SERVING

You may need to serve a range of documents. The most likely documents required to be served are listed at Item 3 of the Affidavit of Service (Form 7) contained in the Service Kit. In the case of a subpoena, it is necessary at the time of service to provide "conduct money" to cover the cost of the person travelling to and from the Court and home (or workplace).

OVERSEAS SERVICE

If you need to serve documents overseas please ask Registry staff about the special requirements.

DISPENSING WITH SERVICE

If you cannot find the other party to serve the documents on them, it is possible to apply to the Court to dispense with service of the application. You should obtain legal advice about how to do this.

SERVING A SUBPOENA

If you need to call a witness to Court who may not come willingly, you will need to ask the Court to issue a subpoena. If you are acting for yourself, you will need to write to the Registrar with your subpoena to request the issue and indicate why the witness is being subpoenaed.

If the Court issues a subpoena then you are responsible for arranging for it to be served on the person. This generally can only be done by special service by

hand and time limits apply – Court staff can tell you about these. Generally, a person or institution who is to produce documents must be served 7 clear days before the date stated on the subpoena for the documents to be received by the Court.

PROOF OF SERVICE

The person who serves an application or other documents needs to file an affidavit (written statement) to tell the Court how and when the documents were delivered. The Family Court's Form 7 is the Affidavit of Service. See the Service kit, available from the Court's registry, for all information.

Time limits apply in some cases and there are special requirements for service on individuals living outside Australia and on a body corporate. Check with Court staff.

Service in the Federal Magistrates Court

In the Federal Magistrates Court an application and any document filed with it must be served on each party in the proceedings as soon as practicable. Service by hand is required for an application starting a proceeding or a subpoena requiring attendance of a person.

If the document is not required to be served by hand, the document may be served on a person at the person' address for service:

- by delivering it to the address in a sealed envelope addressed to the person; or
- by sending it to the address by pre-paid post in a sealed envelope addressed to the person; or
- by fax transmission addressed to the person and sent to a fax receiver at the address.

12 ENFORCING YOUR ORDER

The Court does not automatically enforce its orders. It is your responsibility to ask the Court to enforce the orders. You have to tell the Court what the problem is. You do this by making an application to the Court. After considering all the evidence, the Court decides if an order is needed to enforce any existing orders.

There are a number of options for you when a person has refused to obey a Family Court or Federal Magistrates Court order. Set out below are some examples of what you can do. If in doubt you should contact a lawyer.

Orders about children

Your former partner has taken the children and refused to return them.

You should seek legal advice. You should also consider contacting a mediation or counselling service or in some registries (see Chapter 1) the Family Court's mediators may be able to help by talking with you and your former partner to try to sort out the problem. If a new agreement is reached between the two of you, it would be appropriate for an Application for Consent Orders to be filed without going to Court.

If this is not possible, you can file an Application in a Case (Form 2) at the nearest registry of the Family Court. You can also file an application with the Federal Magistrates Court. You must also file an affidavit stating the facts necessary for the Court to make the orders sought in the application.

The facts of your case will determine how quickly the application will be listed before a judge or federal magistrate. The Court may order you and the other party to talk with a Court mediator before a hearing date is allocated. If the matter is urgent, the application may be listed immediately for hearing. In regional or country registries, this may be by video link up or telephone link up to a judge or federal magistrate at a different location.

The Court may issue a recovery order directing the Marshal of the Court, the Australian Federal Police and the police of the relevant State to find and recover the children.

You have an order allowing you to see your children but your partner won't let you

You should seek legal advice. You should also consider contacting a mediation or counselling service or in some registries (see Chapter 1) the Family Court's mediators may be able to help by talking with you and your former partner to try to sort out the problem. If a new agreement is reached between the two of you, it would be appropriate for an Application for Consent Orders to be filed without going to Court.

If this is not possible you can file an Application – Contravention (Form 18) at the nearest registry of the Family Court or the Federal Magistrates Court. You must also file an affidavit stating the facts necessary for the Court to make the orders sought in the application.

The Court may order that:

- the resident parent attend a parenting program;
- the resident parent be fined, lodge a bond, work some hours of community service or be jailed for up to 12 months;
- you have additional contact to make up for the contact you missed out on.

The children have been taken or contact has been refused when the Court is not open

The Family Court and the Federal Magistrates Court have a service for emergencies out of business hours. This service is used when there is a risk that a child may be taken out of the country or there is a serious risk to a child that must be rectified immediately (SEE ALSO 'CHILD ABDUCTION' CHAPTER 13).

You can call your nearest Court registry and get details about it. If you need to ring after hours, all registries have a taped message which gives contact numbers for emergencies. Have your file number handy if you have an existing file or Court orders in place.

Penalties for breaking a parenting order

There are significant consequences for breaking parenting orders.

You must attend a Court hearing if your former partner makes a formal application alleging that you have broken a parenting order. If you do not attend the hearing orders may be made in your absence, including an order for your arrest.

If it is the first time such a complaint has been made and the Court finds you have broken the parenting order without reasonable excuse, the Court must do one or more of the following:

- order you to attend a parenting program – the organisation running the program will assess if it is suitable for you;
- make another parenting order to compensate your former partner for any contact time with the children lost as a result of your actions;
- delay ('adjourn') the Court action to allow either or both of you to apply for a further parenting order that cancels or changes the original order;
- change the parenting order that has been broken.

Even if it is the first time, if your behaviour shows serious disregard for the parenting order, the Court must give the appropriate penalty.

Anyone who shows serious disregard for a parenting order faces the same range of penalties as a person who has broken a parenting order before and does so again without reasonable excuse. In both these cases, if the Court decides it is not appropriate for you to go to a parenting program, it must order you to do one or more of the following:

- work in community service;
- lodge a bond;
- pay a fine of up to $6600;
- go to jail for up to 12 months.

Parenting orders – your legal obligations

Given the severity of possible consequences of breaking orders, it is helpful to remember the following:

- You must do everything that the parenting order says.
- The order remains in force until new parenting order changes it in some way.
- Even if your circumstances, or those of your children or former partner change, the first Court order continues to apply to you. You must continue to do what the parenting order says until the Court formally changes it.
- Sometimes people talk to each other about making an ongoing change to arrangements set out in a parenting order. These talks do not change the order.

If you both agree to change the arrangements you can ask the Court to change the parenting order. You do this by filing an Application for Consent Orders. If you have a registered parenting plan you change it by applying to revoke the original plan and filing an Application for Consent Orders. Registry staff can give you the forms you need. Although you can apply yourself, you may benefit from the help of a lawyer.

Orders about property and maintenance

You have an order in your favour for payment of a sum of money and your former partner is not paying

If you don't know why payments have not been made, see if you can find out. It may be a simple issue, which can be rectified easily, such as a problem with a bank transfer of funds.

If you are owed money (the payee) from a payer arising from a Court order, you may apply for an enforcement hearing. The process is:

Step 1	File an Application in a Case (Form 2) with an affidavit in the Family Court or application in the Federal Magistrates Court. The Court will fix an enforcement hearing date.
Step 2	The payee arranges to serve the payer with the documents filed, a written notice demanding production of the documents stated on a list of documents that the payee has prepared, and a brochure entitled *Enforcement Hearings*.
Step 3	The payer must complete, swear or affirm a Financial Statement (Form 13) and serve this on the payee or the payee's lawyer if there is one.
Step 4	Both the payer and the payee must attend the enforcement hearing. The payer must produce the documents on the list served by the payee. The payee may examine the payer about their financial affairs.

If the payer fails to attend the Court on the enforcement hearing date, after having been properly, served, the Court may issue a warrant for their arrest. A refusal to answer questions or failure to comply may be a contempt of Court or an offence for which the maximum penalty is $5,500.

The Court has several options to enforce the order. They include:

- an Enforcement Warrant, which enable personal or real property to be seized and sold;
- a Third Party Debt Notice including attachment of earnings and debts;
- an order for sequestration of property;
- receivership (including management).

You are best advised to seek legal advice on which option is the one you should be seeking to enforce the orders.

YOU HAVE AN ORDER FOR MAINTENANCE FOR YOUR CHILDREN AND YOUR FORMER PARTNER IS NOT PAYING

In most situations, the Family Court and the Federal Magistrates Court do not usually make orders for child maintenance. The Child Support Agency now looks after most cases (SEE CHAPTER 8).

If you do have a Family Court or Federal Magistrates Court order you can follow the same procedure above for an enforcement hearing. In some cases where the maintenance is to be paid under the Child Support Scheme the same process can also be followed. However, the Child Support Agency may the only party capable of enforcing the arrears of child support. You should first check this with your lawyer, if you have one, or the Child Support Agency to make sure you are able to enforce the child support debt.

Most legal aid commissions have a separate child support unit which may be able to assist you.

Child abuse

Child abuse is an assault, including sexual assault, of a child or the involvement of a child in sexual activity with another person in which the child is used, directly or indirectly, as a sexual object.

If you believe that a child has been abused or is at risk of abuse immediately contact police or the relevant child welfare authority in your State or Territory (see heading 'Children – abuse' under the Government section of your Telstra white pages telephone directory). These authorities have specially trained experts who can investigate the matter with the least trauma to the child.

FAMILY LAW AND CHILD ABUSE

An urgent application can be filed in any registry of the Family Court or the Federal Magistrates Court along with a special notice called 'Notice of Child Abuse or Risk of Child Abuse' (Form 4) detailing the alleged abuse. To protect the child, the Court can make restraining orders and orders changing the child's residence, contact and living arrangements. The Court can also obtain reports and appoint a lawyer to act for the child ('child representative').

Family violence orders

Family Violence orders are orders made by a Magistrates Court of State or Territory under their legislation to protect a party from actual or potential family violence. You must tell the Court of any relevant family violence orders, as they may affect the making and operation of Family Court or Federal Magistrates Court orders, particularly contact orders. The Court must make sure that contact orders do not expose people and children to family violence.

If the Court makes a contact order that is inconsistent with a family violence order, the contact order overrides the conflicting family violence order to the extent of the inconsistency. This means that the family violence order may give the victim very limited or no protection and the police may not be able to assist adequately.

Family violence orders can be modified in a State or Territory Court to take into account the practical arrangements for contact. Alternatively, Family Court or Federal Magistrates Court contact orders can be made to take into account family violence orders, for example by arranging for an independent person to be present during contact hand-over times or for hand-overs to take place at a supervised contact centre.

Child abduction

If a child has been abducted you should seek urgent legal advice. If you are concerned about the safety and well-being of the child tell the police and the relevant child welfare authority in your State or Territory. (See heading 'Children – abuse' under the Government section of your white pages telephone directory).

You should file an application in the Family Court or the Federal Magistrates Court seeking the return of the child. The Court has wide powers to facilitate location and return the child to the person who primarily cares for the child. In special circumstances the Court can lift the restrictions that stop the media publishing the names of people involved in family law proceedings.

If the child has been removed and you don't know where they have been taken the Courts have the power to direct individuals (under a 'location order') and government departments (under an 'information order') to search their records and give the Court any details they have about the whereabouts of the child.

There are strict guidelines covering to whom the Court can disclose the information about the child's location. The information can be used either to allow documents to be served or for a 'recovery order' to be issued, in which case the child is removed from the abductor and returned to the person named in the Court order.

Before making a location, information or recovery order the Court must decide that such an order is in the best interests of the child.

ABDUCTION OF CHILDREN FROM AUSTRALIA

If you believe a child may be illegally removed from Australia you should take urgent action. Once a child is outside Australia they become subject to the laws of other countries or to international conventions. There is no guarantee that the child will be returned to Australia.

If this situation applies to you, immediately contact a lawyer, if possible. Otherwise contact the Family Court or Federal Magistrates Court. To stop a child being removed illegally from Australia, you need orders preventing the child being removed from Australia. All registries of the Family Court or the Federal Magistrates Court have an after-hours emergency phone service. If you are concerned about the safety and well-being of the child tell the police and the relevant child welfare authority in your State or Territory. (see heading 'Children – abuse' under the Government section of your Telstra white pages telephone directory). They also have an after hours emergency phone service.

Court orders can be directed to all Australian airports and other relevant institutions. It is important that you give the Court full details about:

- the identity of the child and the alleged abductor, including the child's full name or other names by which they may be known;
- whether the child has their own passport, more than one passport or if they are on another person's passport; and

- any other important information, in your possession, to assist the Court and the authorities.

HAGUE CONVENTION COUNTRIES

These are countries that have agreed to be bound by a convention dealing with international child abduction. One of the main aims of the convention is the prompt return of children wrongly removed to another convention country.

Australia is a convention country, but not all countries are signatories to the convention. If a child is taken from Australia to another convention country there are procedures under the convention whereby the child may be returned to Australia.

For further details and a list of convention countries, contact the Attorney General's Department on 1800 100 480 or visit their website at:

- **www.law.gov.au/childabduction**

Children and special medical procedures

You must get authorisation from the Family Court or the Federal Magistrates Court before a child can undergo a major medical procedure that may permanently affect their quality of life. These include cases such as sterilisation of a daughter who has a significant intellectual disability or surgery for gender reassignment.

A medical procedure application can be made by:

- a parent;
- a person having a parenting order;
- the child;
- a child representative; or
- any other person concerned with the care, welfare and development of the child.

The laws about medical procedures also cover situations where a medical person believes a significant procedure is necessary to protect the health and well being of a child but the child's parents or guardian refuse to give consent.

Medical procedures applications include:

- difficult ethical issues;
- irreversible procedures;
- life-threatening situations;
- treatments of significant risk;
- disputed treatments.

The two overriding principles the Court will focus on when considering a medical procedure application are:

- the best interests of the child; and
- whether the procedure is the 'step of last resort' – the Court must be certain that no other option is practicable to enable a child to lead a life that is in keeping with his or her needs and capacities.

If you are considering a medical procedure application you will need to obtain expert legal and medical advice. The government agencies you may need to consult with will differ in each State or Territory. Court staff can tell you what to do in your case.

The Family Court has available on its website a book about medical procedures called 'A question of right treatment', which it has produced in conjunction with a number of other government agencies, in relation to Victoria and Queensland only.

14 FEES AND COSTS OF PROCEEDINGS

A number of fees apply in Family Law proceedings. Each Court has its own set of fees. The fees for the Federal Courts are set by the Federal Government and are linked to changes in the consumer price index. **The list below shows fees at 1 July 2004**. Fees are usually adjusted every 2 years, although they can change at any time. Check with your nearest registry for current charges.

Fees in the Family Court

The fees to be paid, at the time of filing, are base don the application you are seeking, not the form you are filing.

- Application for Final Orders (Form 1) **$181**
- Response to Application for Final Orders (Form 1A) **$181**
- Application for nullity (Form 1) **$606**
- Application for declaration as to validity (Form 1) **$606**
- Hearing fee (defended matters) **$363**
- Notice of Appeal from Court of Summary Jurisdiction (Form 20) **$363**
- Notice of Appeal to the Full Court (Form 20) **$746**
- Application for maintenance **Nil**

VIDEO AND TELEPHONE LINK FACILITY

It may be possible to use telephone or video links for Family Court events. For information obtain the Court's relevant brochures, available via the website or from Court staff. The Court may order that one or more parties pay all or some of the associated costs of the telephone/video link.

Fees in the Federal Magistrates Court

- Application for divorce **$288**
- Application (financial or child) **$115**
- Response (financial or child) **$115**
- Hearing fee (defended matters) **$345**
- Child Support matters **Nil**

When are the fees paid?

Filing fees are payable at the time of filing the application or response. In the Family Court, hearing fees are payable as directed at the Pre-Trial Conference when the matter is set down for hearing.

The person who is making the application is usually (but not always) the one who has to pay the hearing fee. If the fee is not paid within the time allowed the hearing may be cancelled.

In the Federal Magistrates Court, hearing fees must be paid 14 days before the hearing.

FEE EXEMPTION - WHEN DOES A FEE NOT HAVE TO BE PAID?

You may not have to pay a fee if:

- you hold a Health Care Card, Health Benefit Card, Pensioner Concession Card, Commonwealth Seniors Health Card or any other card issued by Centrelink or the Department of Veterans' Affairs that entitles you to Commonwealth health concessions; or
- you are receiving Legal Aid, a Youth allowance, and Austudy, Abstudy, or
- you have received a 'Notice of Exemption' from an approved Community Legal Centre; or
- you are a child under 18 or an inmate of a prison or otherwise legally detained in a public institution.

If any of the above applies to you, ask Court staff for an 'Exemption' form.

FEE WAIVER

A fee may be set aside if your income, day-to-day living expenses, liabilities and assets are at such a level that payment would cause you financial hardship.

The form you will need to complete is called a 'Waiver' form. Guidelines are available to help you work out whether you qualify for a fee to be waived. Both the guidelines and waiver form are available from the Courts' registries or from the Courts' websites.

A waiver is valid only for the fee you are applying to have waived. If a further fee is payable you will need to reapply.

REFUNDS

Government regulations allow refunds of fees for filing an application in the Family Court or the Federal Magistrates Court if you have paid a fee when an exemption or waiver has since been granted for that fee.

The regulations allow refunds for hearing fees only if you have given written notice to the Court that the hearing is not to proceed or that the Court will be asked only to formalise the making of final orders on the day scheduled for the hearing (for example, when orders are made by consent). Usually you must give at least 20 working days notice in the Family Court, whilst in the Federal Magistrates Court you need to give at least 10 working days notice.

For hearings called at short notice in the Family Court (when you are given less than 20 working days notice) then

only 2 working days notice is required if a hearing is not to proceed or will only be held to formalise the making of final orders. Again, you must give notice to the Court in writing.

You may also request a refund if an application or hearing fee has been paid twice in error. 'Request for refund' forms are available from all Court registries.

Lawyers' charges

If you are involved in a family law case and seek help from a family law practitioner, they will charge you for the work you instruct them to do.

FAMILY COURT

In the Family Court, the Family Law Rules sets out the costs lawyers may charge. The lawyer can only charge the amount set out in the prescribed scale of costs (Schedule 3 of the Family Law Rules) or an amount calculated in accordance with a costs agreement entered into between the lawyer and you. The scale of costs is set out in the brochure *Costs Notice* available from the Family Court's registry or the website.

The Rules allow for the lawyer to enter into a costs agreement with you, provided that before entering into such an agreement the lawyer gives you a copy of the Court's brochure *Costs Notice* and advises you of the availability of independent legal advice.

If you want to obtain independent legal advice about the costs agreement presented to you or the costs you have been charged, you can do so by contacting another lawyer. The Law Society in your State or Territory will provide you with a list of family practitioners in your area. You can also find one on the website of the Family Law Section of the Law Council of Australia:

- **www.familylawsection.org.au**

If you have any difficulty getting independent legal advice, seek help from a legal aid office or a community legal centre. Contact details for some of these can be found in Chapter 16.

If you and your lawyer agree to enter into a costs arrangement, the costs to be charged must be set out in the written agreement between you and your lawyer.

NOTIFICATION OF COSTS

Immediately before each court event, your lawyer is required to provide you with written notice of your costs up to that point, both paid and owing, including the court event and an estimate of your future costs up to an including each future court event. In a financial case, the notice must specify the source of the funds for the cost paid or to be paid unless the Court orders otherwise.

At each court event, your lawyer must give to the Court and each other party a copy of the notice given to you.

SELF-REPRESENTED LITIGANT AND NOTIFICATION OF COSTS

If you are not represented by a lawyer, you must still give the Court and each other party a written statement of the actual costs incurred up to and including the event and the estimated future costs of the party including each future court event. For instance you may have seen a lawyer to discuss your case and there may also be telephone, postage, photocopying and fax charges.

In a financial case, the statement must specify the source of the funds for the cost paid or to be paid unless the Court orders otherwise.

YOUR LAWYER'S ACCOUNTS AND YOUR RIGHTS

When you receive an account from a lawyer, you should also receive a copy of the Family Court's brochure called *Costs Notice*. If the Costs Notice was provided to you previously, the account need only refer to the Costs Notice.

The *Costs Notice* sets out that when you first instruct a lawyer to act for you, the lawyer must advise you in writing of the following:

- the basis on which costs will be calculated;
- an estimate of the total cots of the case or if not practicable to do so, a range of estimates;
- the circumstances in which the Court may make an order requiring you to pay the other party's costs and how much these might total; and
- whether any other lawyer or an expert witness will be retained and if so, the estimated costs involved.

During a case, your lawyer must:

- keep you properly informed about costs by giving you a costs notification; and
- if an offer is made during a property case, advise you of cost paid and owed at that stage and the future estimated costs to complete the case.

You are entitled to a detailed 'Bill of Costs' (if the account is not detailed) and that you have the right to dispute the account or any part of it. If your account is not itemised and you disagree with the amount, you should request a detailed 'Bill of Costs'.

Your lawyer must give you the detailed bill within 28 days of this request. The bill must give details including work undertaken on your behalf, the date of such work, the nature of any costs incurred on your behalf and any amount received.

If your lawyer has given you an account that is not itemised and you have paid it, you will need the Court's permission to request an itemised account.

YOUR LAWYER'S RIGHT TO RECOVER COSTS

In the Family Court, if you do not dispute an account within 28 days of being served with the account or the *Costs Notice* brochure (whichever is the later), your lawyer may begin legal action to obtain the money from you.

If you dispute your lawyer's charges by following the procedures in the Family Law Rules (described below) your lawyer cannot recover the money from

you until the Court has dealt with your dispute or you withdraw your objection to the lawyer's claim for costs.

COSTS DISPUTES IN THE FAMILY COURT

The Family Law Rules provide a procedure for registrars to rule on a dispute between a client and a lawyer about an account.

If you want more information about how to dispute a lawyer's account arising from a matter in the Family Court, you can contact any Family Court registry.

If you want more information about your legal rights or obligations you should consult a lawyer. If you have a written costs agreement between you and your lawyer your rights may be different from those set out here.

DISPUTING COSTS - THE PROCESS

If you have received a lump sum account from your lawyer, you are entitled to request an itemised costs account that:

- lists each item and the costs payable by date, description, who did the work and the amount; and
- states any amount received or credited for the costs.

If you want an itemised account, you must within 28 days of receiving a lump sum account, ask your lawyer, in writing, for an itemised account. The lawyer must serve the itemised costs account within 28 days of receiving your request.

If you dispute the itemised costs account, you must take the following steps:

Step 1 Serve a Notice Disputing Costs (Form 15) on the lawyer within 28 days of receiving the itemised costs account.

Step 2 Contact the lawyer to discuss options to resolve the dispute including submitting the dispute to a costs assessor.

Step 3 If the dispute is not resolved, either you or your lawyer can seek assistance from the Court by filing the Notice Disputing Costs and the itemised costs account.

Step 4 The Court will set a date for either:

~ a settlement conference;

~ a preliminary assessment; or

~ an assessment hearing.

On receipt of the Notice from the Court, with the court date, you must serve the Notice on the lawyer as soon as practicable.

Step 5 At a settlement conference, attended by both parties, the Registrar will:

~ give an opportunity to the parties to resolve the matter;

~ identify the issues in dispute; and

~ make procedural orders for the management the costs dispute.

Step 6 At a preliminary assessment, which the parties do not attend, the registrar:

- calculates the amount (the preliminary assessment) for which, if the costs were to be assessed, the costs assessment order would be likely to be made;
- parties are notified of the preliminary assessment amount. Either party may object by filing a written notice of objection and paying into court 5% of the total amount objected to within 21 days after receiving the notice of preliminary assessment.
- If an objection is lodged, the costs dispute is then listed for an assessment hearing.
- If there is no objection lodged, the Registrar then make a cost assessment order for the amount of the preliminary assessment.

Step 7 Both parties must attend the assessment hearing. The Registrar will:

- examine the itemised costs account;
- determine how much is properly payable;
- decide who will pay the cost of the dispute process and how much will be paid;
- make a costs assessment order specifying how much is to be paid.
- decide which party is to receive the money paid into Court at Step 6.

NOTE: at the assessment hearing, unless the itemised account is assessed with a variation in the objecting party's favour of at least 20% of the preliminary assessment amount, costs may be ordered against the objecting party.

The lawyer may amend the itemised costs account up to 14 days before the assessment hearing starts and after that with your consent or the permission of the Court.

REVIEW OF A REGISTRAR'S DECISION

If you or the lawyer disagree with the registrar's decision, either of you may, within 14 days of the date of the costs assessment order, apply for the costs assessment order to be reviewed by a Family Court Judge.

FEDERAL MAGISTRATES COURT

The Federal Magistrates Court Rules do not provide for any costs agreement between lawyers and their clients nor does it provide for disputes in relation to fees charged by lawyers. The requirements for costs agreement and determination of disputes about costs are set out in the various States or Territory legislation. This must determined by the Law Society in the State or Territory where you live.(See your white pages directory for contact numbers).

15 GUIDE TO LEGAL TERMS

Address for service The contact address nominated by a person involved in a Court case for documents to be left or posted to. See also 'Service'.

Adjournment Postponing a Court event to another time. Generally, hearings will not be adjourned unless unforeseen or exceptional circumstances arise. If the Court grants an adjournment, the person who asked for it may be ordered to pay the other person's costs.

Administrative adjournment An adjournment (postponement) by the Family Court Registry, at the request of a party with the written consent of all involved, of a Procedural Hearing, Conciliation Conference or Interim Hearing date. In the Family Court, the written request must be delivered no later than noon the day before the Court event was to take place. In the Federal Magistrates Court, the letter must be forwarded as soon as possible before the Court event.

Affidavit A written statement by a witness setting out relevant facts in the case. It must be sworn or affirmed, usually before a Justice of the Peace, Notary Public or lawyer.

Appeal A procedure, which enables a person to challenge the decision made about their case by the Court. Brochures on the appeal process are available from all Court registries.

Appeal book Bound and indexed collection of all documents relevant to an appeal.

Appellant The person who seeks an appeal.

Applicant The person who first applies to the Court asking for orders to be made.

Case The matter before the Court. See also 'legal proceedings'.

Case Assessment Conference The first major event most people have at the Family Court after documents have been filed. The Case Assessment Conference provides an early opportunity to identify issues in dispute, reach an agreement, identify dispute resolution events to be undertaken by the parties and adopt a case management pathway.

Case Management Directions A set of directions by the judges of the Family Court, which direct how matters are to be managed towards trial. Parties and lawyers must follow these directions.

Case Management Judge The judge in each Family Court registry responsible for the management of cases to ensure that each case is managed in a just, efficient and cost effective manner.

Case Coordinator A member of the Family Court's administration staff who manages individual files in the Family Court. They are the primary contact person for parties and lawyers in respect to a file.

Certified copy A copy of an original document endorsed that it is a true copy by writing on the copy, which is signed and dated.

Child mediation A conference with a mediator at which parties discuss the difficulties experienced (as an individual or as parents) regarding the arrangements for their children during or after separation.

Child's representative A lawyer appointed by the Court to represent the child. They will attend all hearings and conduct the case in a way that promotes the child's best interests. They must be served with all Court documents, be involved in all negotiations and approve any proposed consent orders.

Client Services Officer A member of the Court's administration staff who is the initial point of contact with the Court either over the counter at the registry or over the phone.

Commonwealth Evidence Act This Act of the Federal Government contains the rules that relate to what sort of evidence can be used in Federal Court proceedings and how it can be presented. Copies of the Act are available through Commonwealth Government Information Shops, some libraries and the internet (See Scaleplus at **www.lawgov.au**).

Compliance Whether parties have followed the directions of the Court or requirements of the Act, Rules and Case Management Directions. If anyone has not done what is required the matter may be referred to the judge or judicial registrar for consideration of further orders or costs orders.

Conciliation Conference A conference convened by legally trained deputy registrars in the Family Court. In the Federal Magistrate Court, the convenor may instead be a family lawyer. It involves all parties and their lawyers to resolve disputes in financial cases. The convenor provides the parties with advice as to the options available to them in light of the provisions of relevant legislation and previous decisions of the Court. Anything said at these conferences is privileged and cannot be used in Court.

Consent orders These may be made where both of you come to an agreement and lodge that agreement in writing (usually called 'Terms of Settlement') for approval by the Court.

Contact Word used to describe with whom and for how long a child will see or have other contact with a parent or other person who is important to them. (See also 'residence').

Court events Court events include conferences, mediation, hearings and other Court appearances.

Court mediators Qualified social workers and psychologists with specialist experience in working with families who are experiencing separation. They are part of the Court's team trained in mediation.

Court-ordered mediation Mediation ordered by the Court at any time after an application has been filed where there is a dispute about children. It is privileged and anything said cannot be used later in a trial. However,

the mediator is obliged by the Act to notify the State Welfare Authority if an allegation of child abuse is made.

Costs An amount paid or to be paid for work done by a lawyer and includes expenses.

Cost assessment order An order made by a registrar as to the total amount of costs to be paid by a party to another or that party's lawyer.

Costs Notice A brochure approved by the Principal Registrar of the Family Court setting out the rights and responsibilities of clients and lawyers in relation to costs.

Decree Nisi An order called a decree nisi is made when a Court grants a divorce. After the expiration of one month, this decree automatically becomes absolute (final) unless within this time an appeal or application to rescind it is filed because you have reconciled or if one of you has died or because there has been a miscarriage of justice.

Defaulters list List of Family Court cases managed by Case Management Judge in which at least one party has failed to comply with directions to ready the case for trial or has failed to file a compliance certificate.

Deputy registrars Deputy registrars are Court lawyers and have extensive family law experience. The role of deputy registrars includes the conduct of case assessment conferences, procedural hearings, conciliation conferences and Pre-Trial Conferences.

Determination Phase Commences once the last resolution phase event in the Family Court has concluded without final resolution being achieved. The case is now proceeding towards a trial.

Discovery This is a process which requires a person to list and make available for inspection by others involved in the case all documents that are or have been in their possession, power or control that relate to any of the matters in question in the proceedings. The duty to disclose refers to more than those documents, which a person may physically have in their possession.

Divorce lists Lists of cases before the Federal Magistrates Court, conducted by registrars to hear applications for divorce.

Draft Consent Orders Terms of agreement reached between parties, signed by each of them, to be presented to a judicial officer for formal orders to be made.

Duty of Disclosure Each party to the case has a duty to disclose to all other parties all information, documents, which are relevant to an issue in the case. This duty applies from the (Family Court's) pre-action procedure to the finalisation of the case. Each party must continue to provide information and documents as circumstances change or documents come into their possession, power or control.

Electronic communications Use of facsimile or email to communicate or serve documents. It is the responsibility of the sender to ensure that the recipient received the communication.

Enforcement hearing A hearing conducted on the application of payee when the payer and any other witness is examined about a payer's financial affairs and ability to pay a financial obligation.

Enforcement order An order requiring a person to comply with an order, including an enforcement warrant, a third party debt notice, and an order varying an enforcement order.

Family Law Act The Act under which your case will be decided. You should be very familiar with those sections that apply to your case. Copies are available through some libraries and the Internet (SEE SCALEPLUS AT **www.lawgov.au**).

Family Law Rules see Rules.

Family Report A behavioural science assessment of a family from a non-legal and non-partisan perspective, independent of the case presented by either party to a dispute. Court mediators or private report writers, commissioned by the parties jointly or by the child representative, prepare family reports.

Family Report Summary A short family report of the main factors of the behavioural science assessment undertaken by a Family Court mediator.

Family violence Conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or be apprehensive about, his or her personal well-being or safety.

Family Violence order An order made under a prescribed law of a State or Territory to protect a person from family violence.

Federal Magistrate A judicial officer of the Federal Magistrates Court.

Filing Lodging a document in a registry of the Court. You can do this by post, in person and in some circumstances by electronic means.

Forms To begin legal action in the Court you will first need to fill in an application form. Different forms are used for different applications. Client Services Officers will be able to tell you which form to complete. Some forms, like that used in divorce, come with an explanatory kit attached and most can be filled in by hand.

Full Court A Full Court consists of 3 or more judges together hearing an appeal from a decision of a judge.

Hearing date Date on which an application is to be heard.

Information Session One of the services offered by the Court to tell you the procedures involved in family law matters. You can attend either before or after you file an application.

Interim and procedural applications Applications for an order intended to continue until a further order of the Court filed on a Form 2 (Application in a case).

Interim hearing Hearing of an application for an order other than a final order. The list of such hearings may be called a 'Duty List' or a 'Judicial Duty List'.

Interim orders Orders made after considering the written evidence of the parties and intended to continue until a further order of the Court.

Intervener A person or company other than the applicant or respondent who has come into the case with the permission of the Court. They must comply with all orders and directions.

Joint Case Summary Document Prepared jointly by the parties following orders made at the Pre Trial Conference to be used by the judge at the trial in the Family Court.

Joint conference A conference with a registrar and mediator to help resolve disputes about children and finances when other forms of mediation have been unsuccessful. They are only held as a result of a recommendation by a deputy registrar or mediator or by order of the Court. The deputy registrar will talk to both of you about the options available in light of relevant legislation and previous decisions of the Court.

Judge The judicial officer who will make a final decision about your case if it goes to a trial in the Family Court.

Judgment A decision of a judicial officer at a hearing.

Judicial duty list A list of certain types of cases where interim or procedural applications are heard by either a judge or judicial registrar.

Judicial manager A judge or judicial registrar specifically appointed to manage an individual case.

Judicial officers Judges, federal magistrates, judicial registrars, registrars and deputy registrars. They all have different powers.

Judicial registrar Similar to a judge but has fewer powers.

Leave to appeal Permission to file (lodge) an appeal. In certain cases you need the Court's permission before you can file an appeal. A brochure of the appeal process is available from all Family Court registries.

Legal proceedings Covers all the formal legal steps you must make to get a hearing and a decision from the Court. The words 'case', 'action' and 'litigation' have similar meanings to 'proceedings'.

List Judge The judge who manages the Specific Judge Lists or the Reserve List.

Listings Coordinator A member of the Court's administration staff who is responsible for coordination of the listing of cases for hearing.

Long Cases List A list of those cases determined by the Long Cases List Judge as being appropriate for judicial management as a long case. Long cases are generally those where the trial is estimated to take 6 days or more.

Long Cases List Judge Manages the Long Cases List and determines whether or not a case is placed on the Long Cases List.

Magellan case A child case involving allegations of serious physical harm or sexual abuse of a child. The matter is case managed by a team of senior Family Court staff and the Magellan Judge to ensure the matter is ready for trial within 6 months.

Magellan Judge The designated judge handling Magellan matters in a registry of the Family Court.

Mediation An opportunity to resolve your differences without having a judicial officer impose a decision on you and your family. The way a session is structured will depend on your individual needs and the circumstances of your family. Mediation sessions are privileged and anything said can not be used later in a trial. However, the mediator or counsellor is obliged by the Family Law Act to notify the State Welfare Authority if an allegation of child abuse is made.

Mediation services Services offered by the Court and community based organisations to help settle disputes by agreement rather than a hearing.

Negotiation The process where you each set out what you want and try to reach agreement. This can be done in writing or by talking to each other at any time.

Notice to admit A party may serve this on the another party asking the other party to admit, for the purposes of the case only, that a fact is true or that a document is genuine. The person served with this notice may choose to dispute the fact or document specified.

Notice disputing fact of document A Notice disputing specified facts or documents must be served within 14 days after a party is served with a Notice to admit facts or documents specified in the Notice. Failure to serve a Notice disputing means that the party is taken to admit that the fact is true or the document is genuine.

Notice to produce A party may serve written notice on another party to produce for inspection an original document if the document is a document that must be produced under the duty of disclosure.

Order The Court has the power to order a person to do certain things. Judicial registrars and registrars can only make certain types of orders.

Parenting plans A plan agreed between parents about arrangements for the ongoing care, welfare and development of their children after separation or divorce. Parenting plans can no longer be registered with the Court. However parties may enter into an agreement to revoke a registered parenting plan and make an Application for Consent orders to reflect their new agreement.

Parental responsibility All the duties, powers, responsibilities and authority which, by law, parents have in relation to their children. Each parent has parental responsibility for each of their children who is under 18 unless they have agreed otherwise or the Court has made an order which changes this responsibility in some way. Parental responsibility is not affected by any changes in the parents' relationship, such as separation, divorce or remarriage.

Parties Both the applicant and respondent are parties to the proceeding. If a third party is joined or someone is given permission to intervene they also become parties to the proceedings.

Precedent A case which has already been decided which may serve as an example for other cases.

Pre-Trial Conference Held by a Family Court registrar before your case is listed for a trial. It is another opportunity to settle your case. If that is not possible the registrar will determine if your case is ready for trial and will set the date.

Primary Dispute Resolution (PDR) services These are services offered by the Courts to help you settle your dispute by agreement rather than through a hearing. These services include Information Sessions, group programs for parents and children, voluntary mediation (in some registries), Court-ordered mediation, case assessment conferences, conciliation conferences with registrars and joint conciliation conferences with registrars and mediators. Some of these services are also available from community-based organisations.

Procedural Hearing This is the date for a matter to first come before the Family Court either at the conclusion of a Case Assessment Conference or in a separate list. The date is set when the application is filed.

Procedural orders Orders which are sought or made in a case to prepare it for hearing or negotiation.

Registrar A lawyer employed by the Family Court. (Registrars conduct procedural hearings, conciliation conferences in financial matters and Pre Trial conferences. Registrars have the power to make orders to ensure the case is made ready for a hearing).

Registrar lists Lists of cases heard by registrars for the determination of interim or procedural matters and consent orders. These lists may also include procedural hearings and cases using summary procedures.

Registry An office of the Court that files Court documents or accepts Court documents for filing.

Registry Manager An officer of the Court responsible for the management of the registry.

Reserve List A sequential list of cases allocated for trial before an unspecified Judge, without a specific date. It will be called for trial at short notice.

Residence Word used to describe with whom a child will live. This can be by agreement or Court order. (See also 'Contact').

Resolution Phase Covers the period from the commencement of proceedings in the Family Court to the point at which it is decided that a matter should be prepared for trial.

Respondent The person against whom an order has been sought in an application to the Court.

Rules These are the Family Law Rules, sometimes referred to as the Rules of the Court, which set out key obligations such as what forms must be used, when they must be filed and any other requirements of the Court. The Federal Magistrates Court has its own Rules.

Sealed copy A copy of a document which has an original Court seal (stamp) on it. Only Warrants, Subpoenas and Orders are now sealed by the Family Court.

Service Describes how documents are provided by one party to another. This can be done by hand (not by you, but by a friend or professional process server), by post and by electronic means. There are rules about how service should be arranged – check with Court staff.

Specific issues An agreement or Court order about any aspect of parental responsibility other than contact or residence. Specific issues include a child's education, religion, health, and sporting activities.

Specific Judge List A sequential list of cases allocated for trial before a Specific Judge (the Specific List Judge).

Specific questions Written specific questions relevant to an issue in the matter delivered by one party to the another party. In most cases the other party must answer the specific question, state their objection to it or state why they cannot answer it. The Court may order a person to answer a question.

Spouse Your husband or wife, or former husband or wife.

Stay an order To suspend the operation of an order.

Subpoena A document issued by the Court, generally at the request of a party, which requires a person to go to Court to give evidence or bring documents, books or things to the Court which are in their possession, custody or control or to do both.

Summary of Argument A document prepared by each party for consideration by the judge. It sets out the orders that a party seeks from the Family Court at the trial and refers to the relevant legislation, case law and facts in the case to support their argument.

Technical Medium Telephone link or video link.

The Assessment Act The Child Support (Assessment) Act.

The Registration Act The Child Support (Registration and Collection) Act.

Transfer The removal of a case from one judicial officer or Court to another judicial officer or Court including the Federal Magistrates Court.

Transcript Record of evidence in Court proceedings.

Trial The final hearing of a matter before a judge, federal magistrate, or judicial registrar. Having considered all the evidence presented, the judge will make orders to finalise the matter.

Trial Judge Judge hearing the trial of a case.

Trial Notice A written notice issued at the end of the Family Court's resolution phase if a case is not settled by the parties. It contains orders for the preparation of a case for trial and advises the date and time for a Pre-Trial Conference.

Trial Plan A document prepared in draft by the registrar at the Pre-Trial Conference to record in broad terms the time estimated by the parties required for the trial and final submissions.

Witness A person who gives evidence to the Court about their knowledge of a case.

Court registries

Registries of the Courts are located in all capital cities and some regional centres. They provide filing and dispute resolution services and hearings of disputes.

Registries are open weekdays for the hours as listed besides each individual registry listing. Staff is available to answer telephone inquiries between 9:00 am and 5:00 pm.

FAMILY COURT

The Family Court provides additional circuits by judges, judicial registrars, registrars or deputy registrars in other areas, including other regional centres and country towns. In some cases mediation services may also be provided during these circuits. These services are also listed below. For detailed information contact the nearest registry to you.

- Family Court website: **www.familycourt.gov.au**

FEDERAL MAGISTRATES COURT

The Federal Magistrates Court provides circuits by federal magistrates in regional and country areas. For further information about circuit locations and dates, contact your nearest Court registry or telephone the Federal Magistrates Court's national assistance number: 1300 367 110.

- Federal Magistrates Court website: **www.fmc.gov.au**

Registries

AUSTRALIAN CAPITAL TERRITORY

Canberra (02) 6267 0511
Mediation (02) 6267 0620
Cnr University Ave & Childers St, Canberra, ACT 2600 > > > > > OPEN: 8.45AM-4.30PM

NEW SOUTH WALES

Sydney (02) 9217 7111
Mediation (02) 9217 7333
97–99 Goulburn St, Sydney, NSW 2000 > > > > > > > > > > > > > > OPEN: 8.45AM-4.30PM

Newcastle (02) 4926 1255
Mediation (02) 4926 4299
61 Bolton St, Newcastle, NSW 2300 > > > > > > > > > > > > > > > > OPEN: 8.30AM-4.30PM

Parramatta (02) 9893 5555
Mediation (02) 9893 5591
1-3 George St, Parramatta, NSW 2150 > > > > > > > > > > > > > > > OPEN: 8.30AM-4.30PM

Coffs Harbour
Brisbane on (07) 3248 2200
for details about services at Coffs Harbour

Dubbo (02) 6881 1555
Cnr Macquarie & Wingewarra Sts
Dubbo, NSW 2830> OPEN: 8.45-12 NOON, 1PM-4.30PM

Lismore (02) 6621 8977
29-31 Molesworth St, Lismore, NSW 2480 > > > > > > > > > > > > OPEN: 8.30AM-4.30PM

Wollongong (02) 4253 6200
1/43 Burelli St, Wollongong, NSW 2500> > > > > > > > > > OPEN: 8.45AM-1PM, 2-4.30PM

NORTHERN TERRITORY

Darwin (08) 8981 1488
Mediation (08) 8941 2933
Level 1, TCG Building
80 Mitchell Street Darwin, NT 0800 > > > > > > > > > > > > > > > > OPEN: 8.30AM-4.30PM

Alice Springs (08) 8952 8222
Centrepoint Building, Hartley St, Alice Springs, NT 0870> > > > > > OPEN: 10AM-3PM

QUEENSLAND

Brisbane (07) 3248 2200
Mediation (07) 3248 2300
119 North Quay, Brisbane, Qld 4000 > > > > > > > > > > > > > > > > OPEN: 8.30AM-4.30PM

Townsville (07) 4722 9333
Mediation (07) 4722 9340
Level 2, Commonwealth Centre ~ 143 Walker St
Townsville, Qld 4810 > OPEN: 8.45AM-4.30PM

Cairns (07) 4041 2377
Level 4, Commonwealth Centre
104 Grafton St, Cairns, Qld 4870 > > > > > > > > > > > > > > OPEN: 8.30AM-1PM, 2-4.30PM

Rockhampton (07) 4921 2939
Cnr East & Fitzroy Sts, Rockhampton, Qld 4700 > > > > > OPEN: 8.30AM-1PM, 2-4.30PM

SOUTH AUSTRALIA

Adelaide (08) 8205 2666
Mediation (08) 8205 2600
25 Grenfell St, Adelaide, SA 5000 > > > > > > > > > > > > > > > > > > OPEN: 8.45AM-4.30PM

TASMANIA

Hobart (03) 6232 1725
Mediation (03) 6232 1725
39-41 Davey St, Hobart, Tasmania 7000 > > > > > > > > > > > > > > OPEN: 8.45AM-4.30PM

Launceston (03) 6334 2111
Level 3, ANZ Building ~ Cnr Brisbane and George Sts
Launceston, Tasmania 7250 > OPEN: 8.45AM-4.30PM

VICTORIA

Melbourne (03) 8600 3777
Mediation (03) 8600 3888
Commonwealth Law Courts, 305 William St
Melbourne, Vic 3000 > OPEN: 8.45AM-4.30PM

VICTORIA

Dandenong (03) 9767 6200

Mediation (03) 9767 6280

53–55 Robinson St, Dandenong, Vic 3175 > > > > > > > > > > > > > OPEN: 8.30AM-4.30PM

Albury (02) 6021 8944

463 Kiewa Street, Albury, NSW 2640 > > > > > > > > OPEN: 8.45AM-12.30PM 1.30-4.30PM

WESTERN AUSTRALIA

– SEE FAMILY COURT OF WESTERN AUSTRALIA

Perth (08) 9224 8222

150 Terrace Rd, Perth, WA 6000

FAMILY COURT CIRCUITS

NSW – Armidale, Bathurst, Broken Hill, Coffs Harbour, Dubbo, Lismore, Orange, Port Macquarie, Tamworth, Wollongong

Qld – Mackay, Thursday Island, Rockhampton

SA – Mt Gambier, Whyalla

Tas – Devonport

Vic – Albury, Ballarat, Bendigo, Geelong, Gippsland, Mildura, Traralgon, Warnambool

Additional visiting mediation services

NSW – Ballina, Bateman's Bay, Bathurst, Bega, Bourke, Brewarrina, Byron Bay, Glen Innes, Grafton, Inverell, Muswellbrook, Nowra, Orange, Parkes, Sutherland, Taree, Tenterfield, Tweed Heads, Wagga Wagga

NT – Katherine, Jabiru, Tennant Creek, Uluru

Qld – Atherton, Ayr, Biloela, Bowen, Charters Towers, Gladstone, Gold Coast, Ingham, Innisfail, Mackay, Mareeba, Mossman, Mount Isa, Tully

SA – Broken Hill, Legal Services Commission City of Adelaide, Mount Gambier, Noarlunga, Port Augusta, Port Pirie, Wyalla

Vic – Broadmeadows, Hastings, Lilydale, Preston, Sale, Shepparton, Wangaratta, Wonthaggi

The Court's mediators and Indigenous family consultants also visit remote communities in the Northern Territory, Far North Queensland and Torres Strait. In Victoria, Dandenong registry also provides a visiting mediation consultancy service for Aboriginal communities in East Gippsland, based at Bairnsdale.

Who else can help?

ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES

NSW Sydney Regional Aboriginal Corporation Legal Service – (02) 9699 8019

NT North Australian Aboriginal Legal Aid Service – (08) 8981 5266

Qld West Queensland Aboriginal and Torres Strait Islanders Corporation for Legal Aid – (07) 4743 7448, (07) 4743 7033

SA Aboriginal Legal Rights (08) 8211 8824

Vic Victorian AboriginalLegal Service (03) 9419 3888 or 1800 064 865

WA Aboriginal Legal Service of Western Australia- (08) 9265 6666

ATTORNEY-GENERAL'S DEPARTMENT

- Central office (02) 6250 6666
- Family Law and legal Assistance Division (02) 6250 6754
- National Alternative Dispute Resolution Advisory Council (02) 6250 6272

CATHOLIC WELFARE AUSTRALIA: MEMBER ORGANISATIONS

- **www.catholicwelfare.com.au**

An umbrella organisation providing a wide range of counselling, mediation, conciliation and contact centres. All services are provided on a non-discriminatory basis.

ACT

- Centacare Canberra and Goulburn – (02) 6239 7700
- Marymead Child and Family Centre – (02) 6295 2755

NSW

- Bathurst – (02) 6331 8944
- Coffs Harbour – (02) 6650 0672
- Port Macquarie – (02) 6584 0704
- Sydney – Centacare Catholic Community Services – (02) 9283 3099
  Centacare Catholic Family Services – (02) 9473 4511
- Parramatta – (02) 9630 7788
- Wagga Wagga: Centacare Catholic Family Services – (02) 6931 7911
- Wilcannia/Forbes – (02) 6851 6936
- Wollongong: Centacare Catholic Family Welfare Services – (02) 4227 1122

NT

- Darwin: Centacare – (08) 8924 2200

QLD

- Brisbane: Centacare Brisbane – (07) 3224 3295
- Mercy Family Services – (07) 3267 7100
- Cairns – (07) 4051 9511
- Rockhampton – (07) 4927 1700
- Toowoomba – (07) 4632 3604
- Townsville: Centacare Catholic Family Services – (07) 4772 7799

SA

- Adelaide: Centacare Catholic Family Services – (08) 8210 8200
- Whyalla – (08) 8645 8233

Tas

- Centacare Tasmania – (03) 6278 1660

Vic

- Ballarat – (03) 5337 8999
- Bendigo: Centacare Sandhurst – (03) 5443 9577
- Melbourne: Centacare Catholic Family Services – (03) 9287 5555
- Warragul: Centacare Gippsland – (03) 5622 1188

WA

- Broome: Centacare Kimberley – (08) 9192 2293
- Geraldton – (08) 9921 1433
- Perth:Catholic Marriage Education Services – (08) 9325 1859
  Centacare Incorporated – (08) 9325 6644

CENTRELINK

- **www.centrelink.gov.au**
- Family Assistance Office – 13 6150
- Pensions – 13 2300
- Customer relations – 1800 000 567

CHILD SUPPORT AGENCY

- **www.csa.gov.au**
- General enquiries – 131 272
- CSA InfoLine 131 107
- Change of Assessment team – 131 141

The CSA website has lots of information, including:

~ a Community Services Directory to help you find services for counselling,

~ mediation and financial counselling in your local community calculators to help you work out how much child support to pay and to help with budgeting information to help you manage your child support.

COMMUNITY LEGAL CENTRES

- **www.naclc.org.au**
- National Association of Community Legal Centres – (02) 9264 9595
- ACT ~ Association of Community Legal Centres – (02) 6257 2931
- NSW ~ Community Legal Centres Secretariat – (02) 9318 2355
- NT ~ Association of Community Legal Centres – (08) 8941 9989
- Qld ~ Association of Independent Community Legal Centres – (07) 4721 5511
- SA ~ Council Community Legal Centres – (08) 8243 1800
- VIC ~ Victorian Federation of Community Legal Centres – (03) 9602 4949
- WA ~ Federation of Community Legal Centres – (08) 9221 9322

CONTACT CENTRE

Australian Children's Contact Services Association

- **www.accsa.org.au**
- (03) 9363 1811

COURT NETWORK (VICTORIA)

Support service for people involved in Family Court and Federal Magistrate Court matters in Victoria

- 1800 681 614

CRISIS LINE (NT)

Crisis Line is a 24 Hour, 7 days a week free telephone counselling, referral and information service available to people Northern Territory wide. There is also a 24/7 telephone counselling service called the Kids Chat Line and free face to face counselling available in business hours.

- Crisis Line Free Call 1800 019 116
- Kids Chat Line 1800 332 333

DOMESTIC VIOLENCE CRISIS LINES

can be found inside the front cover of your telephone book

- Family Law Hotline 1800 050 321

FAMILY SERVICES AUSTRALIA

Umbrella group representing counselling, mediation and other family service organisations. To contact services in your area contact:

- 1300 365 854
- (02) 6281 1788
- or visit the website: **www.fsa.org.au**

FEDERAL MAGISTRATES COURT

- **www.fmc.gov.au**
- National Office ~ Commonwealth Law Courts, 305 William St, Melbourne
  Tel: 1300 367 110

FINANCIAL COUNSELLING SERVICES

- ACT – 02 6257 1788
- NSW – 1800 808 488
- NT – 08 893 2611
- Qld – 07 3257 1957
- SA – 08 8202 5182
- Tas – 03 6223 4595
- Vic – 03 9614 5433
- WA – 08 9221 9411

KID'S HELP LINE

- **www.kidshelp.com.au**
  A national 24 hour phone counselling service for children and young people
- 1800 55 1800

LAW SOCIETIES

- **www.familylawsection.org.au**

- ACT – (02) 6247 5700
- NSW – (02) 9926 0333
- NT – (08) 8981 5104
- QLD – (07) 3842 5842
- SA – (08) 8229 0222
- TAS – (03) 6234 4133
- VIC – (03) 9607 9311
- WA – (08) 9322 7877

LEGAL AID COMMISSIONS

ACT

- **www.legalaid.canberra.net.au**
  Canberra – (02) 6243 3411

NSW

- www.legalaid.nsw.gov.au
  Sydney – (02) 9219 5000
  Bankstown – (02) 9707 4555
  Blacktown – (02) 9621 4800
  Burwood – (02) 9747 6155
  Campbelltown – (02) 4628 2922
  Coffs Harbour – (02) 6651 7899
  Dubbo – (02) 6885 4233
  Fairfield – (02) 9727 3777
  Gosford – (02) 4324 5611
  Lismore – (02) 6621 2082
  Liverpool – (02) 9601 1200
  Manly – (02) 9977 1479
  Newcastle – (02) 4929 5482
  Orange – (02) 6362 8022
  Parramatta – (02) 9891 1600
  Penrith – (02) 4732 3077
  Sutherland – (02) 9521 3733
  Tamworth – (02) 6766 6322
  Wagga Wagga – (02) 6921 6588
  Wollongong – (02) 4228 8299

NT

- **www.ntlac.nt.gov.au**
  Darwin – (08) 8999 3000
  Katherine – (08) 8973 8704
  Alice Springs – (08) 8951 5377

Qld

- **www.legalaid.qld.gov.au**
  Brisbane – 1300 65 11 88
  Bundaberg – (07) 4151 4180
  Caboolture – (07) 5495 7102
  Cairns – (07) 4048 1130
  Inala – (07) 3372 8756
  Ipswich – (07) 3280 1150
  Mackay – (07) 4957 3354

Qld [continued]

Maroochydore – (07) 5443 5918
Mount Isa - (07) 4743 4382
Rockhampton – (07) 4922 4978
Southport – (07) 5591 3043
Toowoomba – (07) 4639 1740
Townsville – (07) 4721 2521
Woodridge – (07) 3290 3053

SA

- **www.lsc.sa.gov.au**

  Adelaide – (08) 8463 3555
  Elizabeth – (08) 8207 9292
  Holden City – (08) 8369 1044
  Noarlunga – (08) 8207 3877
  Port Adelaide – (08) 8207 6276
  Whyalla – (08) 8648 8060

Tas

- **www.legalaid.tas.gov.au**

  Hobart – (03) 6233 8383
  Burnie – (03) 6434 6444
  Devonport – (03) 6421 7870
  Launceston – (03) 6336 2050

Vic

- **www.legalaid.vic.gov.au**

  Melbourne – (03) 9269 0234
  Bairnsdale – (03) 5153 1975
  Bendigo – (03) 5441 1155
  Broadmeadows – (03) 9302 2388
  Dandenong – (03) 9791 5522
  Frankston – (03) 9784 5222
  Geelong – (03) 5229 2211
  Morwell – (03) 5134 8055
  Preston – (03) 9478 8844
  Ringwood – (03) 9879 5500
  Shepparton – (03) 5823 6200
  Sunshine – (03) 9311 8611

WA

- **www.legalaid.wa.gov.au**

  Perth – 1300 650 579
  Broome – (08) 9192 1888
  Bunbury – (08) 9721 2277
  Christmas/Cocos Island – (08) 9164 7529
  Fremantle – (08) 9335 7108
  Kalgoorlie – (08) 9091 3255
  Midland – (08) 9274 3327
  South Hedland – (08) 9172 3733

LEGAL INFORMATION ACCESS CENTRE NETWORK (NSW)

- NSW only. Ask for the Legal Tool Kit at your local library or contact the Centre in the State Library of NSW – (02) 9273 1558.

LIFELINE

- **www.lifeline.org.au**

  A 24 hour crisis line for individuals or couples and also financial counselling.
- 13 11 14

MEN'S LINE AUSTRALIA

- **www.menslineaus.org.au**

  A 24 hour phone counselling service for men and their partners or family.
- 1300 78 99 78

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS

- **www.dimia.gov.au**
- 131 881

TRANSLATING AND INTERPRETING SERVICE

- 131 450

OTHER PARENTING AND CHILDREN WEBSITES

- Long distanced families:
  www.longdistancefamilies.com
- Single parent families:
  www.singleparentcentral.com

PARENTING

- **www.community.gov.au**
- **www.families.gov.au**
- **www.community.nsw.gov.au**
- **www.nt.gov.au**
- **www.families.qld.gov.au**
- **www.parenting.sa.gov.au**
- **www.dhhs.tas.gov.au**
- **www.beststart.vic.gov.au**
- **www.fcs.wa.gov.au**

CHILD SAFETY

- **www.kidsafe.com.au**
- **www.napcan.org.au**

REGIONAL LAW HOTLINE

Access to government legal information and services, including legal aid and mediation

- 1800 050 400

RELATIONSHIPS AUSTRALIA

- 1300 364 277

  Relationships Australia is also located in regional areas throughout Australia. For more information you can access the website: www.relationships.com.au

  Adelaide – (08) 8223 4566

  Brisbane – (07) 3217 2900

  Canberra – (02) 6281 3600

  Darwin – (08) 8981 6676

  Hobart – (03) 6211 4050

  Sydney – (02) 9418 8800

  Melbourne – (03) 9261 8700

  Perth – (08) 9489 6363

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How your case may progress through the Family

Entry to Court processes

FILE
an Application for Final Orders after completing the required pre-action procedure in the Family Court
(SEE PAGE 11)

First day at court

INFORMATION SESSION

If it is considered a Case Assessment Conference is not appropriate

Case Assessment Conference & Procedural Hearing

OR

Procedural Hearing

OR

Mediation

Your next

Mediatio
if chil

Finar
Deputy
(money)

Joint r
childrer
issues ar
mediat

If an app
has been

Remember, you can settle your dispute at any time an

If you have a concern about family violence, please contact the

before you

Court

t most likely event

IF NOT SETTLED, **A TRIAL NOTICE IS ISSUED**

PRE-TRIAL CONFERENCE

THE TRIAL

on with a Court mediator
dren's issues only are in
dispute

OR

ncial mediation with a
Registrar where financial
issues only are in dispute

OR

mediation conference if
n and property (financial)
e in dispute, with a Court
tor and Deputy Registrar

OR

plication for interim orders
made, an interim hearing

Setting out Orders to be complied with **before** you reach the Pre-Trial Conference

Amongst other things, you will need to prepare your evidence

To determine whether the case is ready for trial and, if it is, to set a trial date

Before a Judge in the formal setting of a Court Room

In children's cases a Family Report may be required to be available to the Judge for the Trial

Determination

d you may avoid the need to attend further Court events

e Client Service Unit at the Registry where your case is to be heard

attend at Court